AMENDED IN ASSEMBLY MARCH 14, 2011

SENATE BILL No. 85

Introduced by Committee on Budget and Fiscal Review

January 10, 2011

~~An act relating to the Budget Act of 2011.~~ *An act to amend Sections 585, 650, 654.1, 655.5, 729, 1282.3, 1701, 1701.1, 1960, 2052, 2315, 4324, 5536.5, 6126, 6153, 6788, 7028.16, 7739, 10238.6, 11020, 11023, 11286, 11287, 11320, 16755, 17511.9, 17550.19, 22430, and 25618 of the Business and Professions Code, to amend Sections 892, 1695.8, 1812.125, 1812.217, 2945.7, 2985.2, and 2985.3 of the Civil Code, to amend Sections 2255, 2256, 6811, 6814, 8812, 8815, 12672, 12675, 22002, 25540, 27202, 28880, 29102, 29550, 31410, 31411, and 35301 of the Corporations Code, to amend Section 7054 of the Education Code, to amend Sections 18002, 18100, 18101, 18102, 18106, 18200, 18201, 18203, 18204, 18205, 18310, 18311, 18400, 18403, 18502, 18520, 18521, 18522, 18523, 18524, 18540, 18544, 18545, 18560, 18561, 18564, 18566, 18567, 18568, 18573, 18575, 18578, 18611, 18613, 18614, 18620, 18621, 18640, 18660, 18661, and 18680 of the Elections Code, to amend Sections 3510, 3532, 5300, 5302, 5303, 5304, 5305, 5307, 10004, 12102, 14752, 17700, 18349.5, 18435, 22753, 22780, 31880, and 50500 of the Financial Code, to amend Sections 12004 and 12005 of the Fish and Game Code, to amend Sections 17701, 18932, 18933, 19440, 19441, and 80174 of the Food and Agriculture Code, to amend Sections 1195, 1368, 1369, 3108, 3109, 5954, 6200, 6201, 9056, 27443, and 51018.7 of the Government Code, to amend Sections 264, 310, and 668 of the Harbors and Navigation Code, to amend Sections 1390, 1522.01, 1621.5, 7051, 7051.5, 8113.5, 8785, 11100, 11100.1, 11105, 11153, 11153.5, 11162.5, 11350, 11351, 11351.5, 11352, 11353.5, 11353.6, 11353.7, 11356, 11357, 11358, 11359, 11360, 11362, 11366.5, 11366.6, 11366.8, 11370.6, 11371,*

11371.1, 11374.5, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380.7, 11381, 11383, 11383.5, 11383.6, 11383.7, 12401, 12700, 17061, 18124.5, 25180.7, 25189.5, 25189.6, 25189.7, 25190, 25191, 25395.13, 25515, 25541, 42400.3, 44209, 100895, 109335, 115215, 116730, 116750, 118340, and 131130 of the Health and Safety Code, to amend Sections 700, 750, 833, 1043, 1215.10, 1764.7, 1814, 1871.4, 10192.165, 11161, 11162, 11163, 11760, 11880, 12660, and 12845 of the Insurance Code, to amend Sections 227, 6425, and 7771 of the Labor Code, to amend Sections 145, 1318, 1672, and 1673, of the Military and Veterans Code, to amend Sections 17, 18, 19.2, 33, 38, 67.5, 69, 71, 72, 72.5, 76, 95, 95.1, 96, 99, 107, 109, 113, 114, 115.1, 126, 136.7, 137, 139, 140, 142, 146a, 146e, 148, 148.1, 148.3, 148.4, 148.10, 149, 153, 156, 157, 168, 171c, 171d, 181, 182, 186.10, 186.22, 186.26, 186.28, 186.33, 191.5, 193, 193.5, 210.5, 217.1, 218.1, 219.1, 222, 237, 241.1, 241.4, 241.7, 243, 243.1, 243.6, 244.5, 245, 245.6, 246.3, 247.5, 261.5, 265, 266b, 266e, 266f, 266g, 271, 271a, 273.4, 273.6, 273.65, 273d, 278, 278.5, 280, 284, 288.2, 290.018, 290.4, 290.45, 290.46, 298.2, 299.5, 311.9, 313.4, 337.3, 337.7, 337b, 337c, 337d, 337e, 337f, 350, 367f, 367g, 368, 374.2, 374.8, 375, 382.5, 382.6, 386, 387, 399.5, 404.6, 405b, 417, 417.3, 417.6, 422, 422.7, 453, 455, 461, 463, 464, 470a, 470b, 473, 474, 478, 479, 480, 481, 483.5, 484b, 484i, 487b, 487d, 489, 496, 496a, 496d, 499c, 499d, 500, 502, 506b, 520, 529, 529a, 530.5, 532a, 532f, 533, 535, 537e, 538.5, 548, 549, 550, 551, 560, 560.4, 566, 570, 577, 578, 580, 581, 587, 587.1, 591, 593, 594, 594.3, 594.35, 594.4, 597, 597.5, 598c, 598d, 600, 601, 610, 617, 620, 621, 625b, 626.9, 626.95, 626.10, 629.84, 631, 636, 637, 647.6, 653f, 653h, 653j, 653s, 653t, 653u, 653w, 664, 666, 666.5, 667.5, 668, 800, 801, 803, 836.6, 1168, 1170, 1174.4, 1203.016, 1208.2, 1213, 1320, 1320.5, 2600, 2650, 2772, 2790, 2900.5, 2932, 3000, 3000.1, 3001, 3003, 3056, 3057, 4011.7, 4016.5, 4019, 4131.5, 4501.1, 4502, 4530, 4532, 4533, 4536, 4550, 4573, 4573.6, 4573.9, 4574, 4600, 11411, 11413, 11418, 11419, 12021, 12021.1, 12021.5, 12022, 12022.5, 12022.9, 12025, 12035, 12040, 12072, 12076, 12090, 12101, 12220, 12280, 12281, 12303.3, 12303.6, 12304, 12312, 12320, 12355, 12370, 12403.7, 12422, 12520, 18715, 18720, 18725, 18730, 18735, 18740, 20110, 22810, 22910, 23900, 25110, 25300, 25400, 25850, 27590, 28250, 29700, 30315, 30600, 30605, 30725, 31360, 32625, and 33410 of, to add Sections 17.5, 1203.018, 1230.1, 2057, 3000.08, and 3000.09 to, to add Title 2.05 (commencing with Section 3450) to Part 3 of, and to repeal Sections 3060 and 3061 of, the Penal Code, to amend Sections

10283 and 10873 of the Public Contract Code, to amend Sections 5097.99, 14591, 25205, and 48680 of the Public Resources Code, to amend Sections 7680, 7724, 7903, and 21407.6 of the Public Utilities Code, to amend Sections 7093.6, 9278, 14521, 16910, 18631.7, 19705, 19708, 30459.15, 32471.5, 32555, 38800, 40211.5, 41171.5, 43522.5, 43606, 45867.5, 45955, 46628, 46705, 50156.18, 55332.5, 55363, and 60637 of the Revenue and Taxation Code, to amend Sections 2478, 2800.4, 4463, 10501, 10752, 10801, 10802, 10803, 10851, 21464, 21651, 23104, 23105, 23109, 23109.1, 23110, 23550, and 42000 of the Vehicle Code, to amend Section 13387 of the Water Code, and to amend Sections 871.5, 1001.5, 1731.5, 1768.7, 1768.85, 3002, 7326, 8100, 8101, 8103, 10980, 14107.2, 14107.3, 14107.4, and 17410 of, and to add Section 1710.5 to, the Welfare and Institutions Code, relating to criminal justice realignment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 85, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2011.~~ *Criminal justice alignment.*

(1) Existing law defines a felony as a crime which is punishable with death or by imprisonment in the state prison. Existing law also provides that except in cases where a different punishment is prescribed by law, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. Every offense which is prescribed to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

This bill would instead provide that a felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail for more than one year. The bill would generally provide that felonies are punishable by imprisonment in a county jail for 16 months, or 2 or 3 years. The bill provides exceptions to imprisonment in a county jail for a variety of felonies, including serious felonies and violent felonies, as defined, felonies requiring registration as a sex offender, and when the defendant has a prior conviction for a serious or violent

felony, or a felony subjecting the defendant to registration as a sex offender, among other exceptions.

The bill would authorize counties to contract with the Department of Corrections and Rehabilitation for beds in state prisons for the commitment of persons from the county convicted of a felony.

(2) Existing law establishes within the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, consisting of the Division of Juvenile Facilities, the Division of Juvenile Programs, and the Division of Juvenile Parole Operations, which operate the statewide system governing wards of the court and other persons committed to the department, and the detention, rehabilitation, probation, and parole thereof. Under existing law, and under specified circumstances, the juvenile court is authorized to commit persons to the Division of Juvenile Justice.

This bill would provide that on and after July 1, 2011, unless a county has entered a memorandum of understanding with the state, the Division of Juvenile Justice shall no longer accept any juvenile offender commitments from the juvenile courts. The bill would, notwithstanding any other law and on and after July 1, 2011, authorize a county to enter into a memorandum of understanding with the state to provide for the admission of minors adjudicated for specified offenses to the Division of Juvenile Justice.

(3) Existing law authorizes the board of supervisors of any county to authorize the correctional administrator to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program in lieu of confinement in the county jail or other county correctional facility under the auspices of the probation officer. Existing law provides that the board of supervisors of any county may, upon determination by the correctional administrator that conditions in a jail facility warrant the necessity of releasing sentenced misdemeanor inmates prior to their serving the full amount of a given sentence due to lack of jail space, offer a program under which specified inmates may be required to participate in an involuntary home detention program.

This bill would enhance the authorization granted to the correctional administrator to offer a voluntary home detention program to include all inmates and additionally subject those inmates to involuntary participation in a home detention program. The bill would provide that

the board of supervisors of any county may authorize the correctional administrator to offer a program under which inmates being held in lieu of bail may be placed in an electronic monitoring program, as specified. The bill would establish criteria for inmates to be eligible for the electronic monitoring program. The bill would make it a misdemeanor for any inmate who is a participant in an electronic monitoring program to fail to comply with the prescribed rules and regulations. By creating a new crime, the bill would impose a state-mandated local program.

(4) Existing law provides for an administrative and application fee for specified work furlough and voluntary electronic home detention program participants. Existing law limits the fees to the pro rata cost of the program to which the person is accepted, as specified. Existing law exempts privately operated voluntary electronic monitoring programs from this fee limitation.

This bill would additionally exempt electronic monitoring programs created by this bill from the fee limitation.

(5) Existing law provides that in all felony and misdemeanor convictions when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough, facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation credited to the period of confinement, as specified, shall be credited upon his or her term of imprisonment, or credited to any fine, as specified.

This bill includes all days served in a home detention program to that provision, as specified. The bill would also provide that time served in a home detention program, as specified, shall qualify as mandatory time in jail.

(6) Existing law provides that in regards to persons sentenced to the state prison, except for certain specified prisoners, for every 6 months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of 6 months, as specified, and that a lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous incarceration. Credit accumulated pursuant to those provisions may be denied or lost for any specified act committed by the prisoner, including acts for misconduct that could be prosecuted as a felony or a misdemeanor, or misconduct that is a serious disciplinary offense. Existing law requires the Department of Corrections and Rehabilitation to provide notice to a prisoner regarding

the denial or loss of credits and permits the prisoner to appeal the decision of the department, as specified.

This bill would provide that credit accumulated while a prisoner is confined to a county jail, city jail, industrial farm, or road camp may be denied or lost for any specified act. The bill would require, for those prisoners confined to a county jail, city jail, industrial farm, or road camp, the sheriff or director of the county correctional department to provide notice to a prisoner regarding the denial or loss of credits and would permit the prisoner to appeal the decision of the sheriff or director of the county correctional department, as specified. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

(7) Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 6 days will be deemed to have been served for every 4 days spent in actual custody, as specified.

This bill would require, for prisoners whose crimes are committed on or after July 1, 2011, except those who are limited to 15% credit against sentenced time, and who are confined to a county jail, city jail, industrial farm, or road camp, that a term of 4 days be deemed to have been served for every 2 days spent in actual custody, as specified.

(8) Existing law generally provides that the Board of Parole Hearings, a state agency, shall have the power to allow prisoners imprisoned in the state prisons to go upon parole outside the prison walls and enclosures, as specified. Existing law authorizes each county to establish a local Community Corrections Partnership to provide a system of felony probation supervision services, as specified.

This bill would enact the Postrelease Community Supervision Act of 2011 to provide that any person released from prison on or after July 1, 2011, after serving a term in prison for certain felonies that are, among other things, not serious or violent, shall be subject to, for a period not exceeding 3 years, community supervision provided by a county agency designated by that county's board of supervisors, as prescribed. By imposing additional duties as local agencies, this bill would impose a state-mandated local program. The bill would also require the courts to establish a process to determine if there has been a violation of the conditions of the postrelease supervision, and the

courts would be authorized to take certain actions upon such a finding. The bill would establish within each county local Community Corrections Partnership an executive committee, as specified, to recommend a local plan to the county board of supervisors on how the 2011 public safety realignment should be implemented within that county.

(9) Existing law generally commits persons convicted of felonies to the jurisdiction of the Department of Corrections and Rehabilitation. Existing law also provides for parole of those felons, under the jurisdiction of the Board of Parole Hearings.

This bill would limit the jurisdiction of the Board of Parole Hearings for purposes of parole supervision by providing that persons who are released from prison after serving terms for a serious felony, as defined, a violent felony, as defined, a term imposed because of 2 or more prior felony convictions, as specified, or a term for an offense whereby the person may be classified as a High Risk Sex Offender, would be subject to parole supervision by the department or the court, as specified.

The bill would require that any parolee who was paroled from state prison prior to July 1, 2011, be subject to certain parole supervision requirements, including, but not limited to, that he or she remain under the supervision of the department until a specified circumstance occurs, and that those parolees, being held for a parole violation in county jail on July 1, 2011, be subject to the jurisdiction of the board. Eligible parolees released from prison after serving terms for a serious felony, a violent felony, a term imposed because of 2 or more prior felony convictions, as specified, or a term for an offense whereby the person may be classified as a High Risk Sex Offender, whose parole is revoked by the board, would be remanded to state prison, and after his or her release jurisdiction over the parolee would remain under the Division of Adult Parole Operations. Any subsequent revocation action would be conducted by the court in the county into which the parolee was released.

(10) Existing law, as amended by Proposition 83 when that initiative was approved by the voters at the November 7, 2006, statewide general election, requires a person who has been convicted of a specified sex offense and who has been released on parole from state prison, to be discharged from parole by the board if he or she has been on parole continuously for 6 years since release from confinement, or 20 years in the case of conviction for specified sex offenses, unless the board determines, for good cause, that the person will be retained on parole.

A measure that amends Proposition 83 requires a ⅔ vote in each house unless the measure expands the scope of the application of the proposition's provisions or increases the punishments or penalties provided therein.

This bill would transfer the above-referenced duties from the board to the courts. The bill would increase the above-described parole periods to 6½ years and 21½ years, respectively.

(11) Existing law generally requires an inmate who is released on parole to be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law also requires the department to release specified information regarding paroled inmates to local law enforcement, as specified, and to control and be responsible for the Law Enforcement Automated Data System (LEADS) regarding that information.

This bill would generally require an inmate who is released under a postrelease supervision program to be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. The bill would also require the Department of Corrections and Rehabilitation to include information on inmates released under a postrelease supervision program in LEADS. The bill would require county agencies supervising inmates released under a postrelease supervision program to provide to the department any inmate information requested by the department that is to be used in LEADS. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

(12) The bill would make additional conforming changes.

(13) By imposing additional burdens on local government entities, this bill would impose a state-mandated local program.

(14) The bill would become operative no earlier than July 1, 2011, and only upon creation of a community corrections grant program to assist in implementing this act and upon an appropriation to fund the grant program.

(15) This bill would appropriate $1000 from the General Fund to the Department of Corrections and Rehabilitation for purposes of state operations.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(17) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 20, 2011.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(18) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.~~

Vote: ~~majority~~ *2/3*. Appropriation: ~~no~~ *yes*. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

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

SECTION 1. This act is titled and may be cited as the 2011 Realignment Legislation addressing public safety.

SEC. 2. Section 585 of the Business and Professions Code is amended to read:

585. Any person, company, or association violating the provisions of this article is guilty of a felony and upon conviction thereof shall be punishable by a fine of not less than two thousand dollars ($2,000) nor more than six thousand dollars ($6,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*. The enforcement remedies provided under this article are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy.

SEC. 3. Section 650 of the Business and Professions Code is amended to read:

650. (a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under

this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee’s return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by *that* imprisonment ~~in the state prison~~ and a fine of fifty thousand dollars ($50,000).

SEC. 4. Section 654.1 of the Business and Professions Code is amended to read:

654.1. Persons licensed under Chapter 4 (commencing with Section 1600) of this division or licensed under Chapter 5 (commencing with Section 2000) of this division or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or coownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of making such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

This section shall not apply to persons who are members of a medical group which contracts to provide medical care to members

of a group practice prepayment plan registered under the Knox-Keene Health Care Service Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

This section shall not apply to any referral to a clinical laboratory which is owned and operated by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, providing the report indicates clearly the laboratory performing the test.

"Proprietary interest" does not include ownership of a building where space is leased to a clinical laboratory at the prevailing rate under a straight lease arrangement.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 5. Section 655.5 of the Business and Professions Code is amended to read:

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or clinical laboratory or under his, her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not the charge is included in the total of the account, bill, or charge. This subdivision

shall be satisfied if the required disclosures are made to the third-party payer of the patient, client, or customer. If the patient is responsible for submitting the bill for the charges to the third-party payer, the bill provided to the patient for that purpose shall include the disclosures required by this section. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) As used in this section, the term "any person licensed under this division" includes a person licensed under paragraph (1) of

subdivision (a) of Section 1265, all wholly owned subsidiaries of the person, a parent company that wholly owns the person, and any subsidiaries wholly owned by the same parent that wholly owns the person. "Wholly owned" means ownership directly or through one or more subsidiaries. This section shall not apply to billings by a person licensed under paragraph (1) of subdivision (a) of Section 1265 when the person licensed under paragraph (1) of subdivision (a) of Section 1265 bills for services performed by any laboratory owned or operated by the person licensed under paragraph (1) of subdivision (a) of Section 1265.

(e) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if the services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(f) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(g) (1) Notwithstanding subdivision (f), a violation of this section by a physician and surgeon for a first offense shall be subject to the exclusive remedy of reprimand by the Medical Board of California if the transaction that is the subject of the violation involves a charge for a clinical laboratory service that is less than the charge would have been if the clinical laboratory providing the service billed a patient, client, or customer directly for the clinical laboratory service, and if that clinical laboratory charge is less than the charge listed in the clinical laboratory's schedule of fees pursuant to subdivision (b).

(2) Nothing in this subdivision shall be construed to permit a physician and surgeon to charge more than he or she was charged for the laboratory service by the clinical laboratory providing the service unless the additional charge is for service actually rendered by the physician and surgeon to the patient.

SEC. 6. Section 729 of the Business and Professions Code is amended to read:

729. (a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for

sexual exploitation, shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment,

to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

SEC. 7. Section 1282.3 of the Business and Professions Code is amended to read:

1282.3. (a) It is unlawful for any person to act with willful or wanton disregard for a person's safety that exposes the person to a substantial risk of, or that causes, great bodily injury by affecting the integrity of a clinical laboratory test or examination result through improper collection, handling, storage, or labeling of the biological specimen or the erroneous transcription or reporting of clinical laboratory test or examination results.

(b) Notwithstanding Section 1287, a violation of this section shall be punished as follows:

(1) A first conviction is punishable by imprisonment in a county jail for a period of not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years, by a fine not exceeding fifty thousand dollars ($50,000), or by both this imprisonment and fine.

(2) A second or subsequent conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both this imprisonment and fine.

(c) The enforcement remedies provided under this section are not exclusive, and shall not preclude the use of any other criminal or civil remedy. However, an act or omission punishable in different ways by this section and any other provision of law shall not be punished under more than one provision. Under those circumstances, the penalty to be imposed shall be determined as set forth in Section 654 of the Penal Code.

SEC. 8. Section 1701 of the Business and Professions Code is amended to read:

1701. Any person is for the first offense guilty of a misdemeanor and shall be punishable by a fine of not less than two hundred dollars ($200) or more than three thousand dollars ($3,000), or by imprisonment in ~~the~~ *a* county jail for not to exceed six months, or both, and for the second or a subsequent offense is guilty of a felony and upon conviction thereof shall be punished by a fine of not less than two thousand dollars ($2,000) nor more than six thousand dollars ($6,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both such fine and imprisonment, who:

(a) Sells or barters or offers to sell or barter any dental degree or any license or transcript made or purporting to be made pursuant to the laws regulating the license and registration of dentists.

(b) Purchases or procures by barter any such diploma, license or transcript with intent that the same shall be used in evidence of the holder's qualification to practice dentistry, or in fraud of the laws regulating such practice.

(c) With fraudulent intent, makes or attempts to make, counterfeits or alters in a material regard any such diploma, certificate or transcript.

(d) Uses, attempts or causes to be used, any such diploma, certificate or transcript which has been purchased, fraudulently issued, counterfeited or materially altered, either as a license to practice dentistry, or in order to procure registration as a dentist.

(e) In an affidavit, required of an applicant for examination, license or registration under this chapter, willfully makes a false statement in a material regard.

(f) Practices dentistry or offers to practice dentistry as it is defined in this chapter, either without a license, or when his license has been revoked or suspended.

(g) Under any false, assumed or fictitious name, either as an individual, firm, corporation or otherwise, or any name other than the name under which he is licensed, practices, advertises or in any other manner indicates that he is practicing or will practice dentistry, except such name as is specified in a valid permit issued pursuant to Section 1701.5.

SEC. 9. Section 1701.1 of the Business and Professions Code is amended to read:

1701.1. (a) Notwithstanding Sections 1700 and 1701, a person who willfully, under circumstances or conditions that cause or

create risk of bodily harm, serious physical or mental illness, or death, practices or attempts to practice, or advertises or holds himself or herself out as practicing dentistry without having at the time of so doing a valid, unrevoked, and unsuspended certificate, license, registration, or permit as provided in this chapter, or without being authorized to perform that act pursuant to a certificate, license, registration, or permit obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) A person who conspires with or aids and abets another to commit any act described in subdivision (a) is guilty of a public offense and subject to the punishment described in subdivision (a).

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 10. Section 1960 of the Business and Professions Code is amended to read:

1960. For the first offense, a person is guilty of a misdemeanor and shall be punishable by a fine of not less than two hundred dollars ($200) nor more than three thousand dollars ($3,000), or by imprisonment in a county jail for not to exceed six months, or by both that fine and imprisonment, and for the second or a subsequent offense is guilty of a felony and upon conviction thereof shall be punished by a fine of not less than two thousand dollars ($2,000) nor more than six thousand dollars ($6,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment, who does any of the following:

(a) Sells or barters or offers to sell or barter a dental hygiene degree or transcript or a license issued under, or purporting to be issued under, laws regulating licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

(b) Purchases or procures by barter a diploma, license, or transcript with intent that it shall be used as evidence of the holder's

qualification to practice dental hygiene, or in fraud of the laws regulating the practice of dental hygiene.

(c) With fraudulent intent, makes, attempts to make, counterfeits, or materially alters a diploma, certificate, or transcript.

(d) Uses, or attempts or causes to be used, any diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered or in order to procure licensure as a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions.

(e) In an affidavit required of an applicant for an examination or license under this article, willfully makes a false statement in a material regard.

(f) Practices dental hygiene or offers to practice dental hygiene, as defined in this article, either without a license, or when his or her license has been revoked or suspended.

(g) Under any false, assumed or fictitious name, either as an individual, firm, corporation or otherwise, or any name other than the name under which he or she is licensed, practices, advertises, or in any other manner indicates that he or she practices or will practice dental hygiene, except a name specified in a valid permit issued pursuant to Section 1962.

SEC. 11. Section 2052 of the Business and Professions Code is amended to read:

2052. (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 12. Section 2315 of the Business and Professions Code is amended to read:

2315. (a) Except as otherwise provided by law, any person found guilty of a misdemeanor for a violation of this chapter shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200) or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment.

(b) A violation of Section 2273 is a public offense and is punishable upon a first conviction by imprisonment in ~~the~~ *a* county jail for not more than one year. A second or subsequent conviction is punishable by imprisonment in ~~the~~ *a* county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or 2 or 3 years, or by a fine not exceeding ten thousand dollars ($10,000) or by both the fine and imprisonment.

SEC. 13. Section 4324 of the Business and Professions Code is amended to read:

4324. (a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in ~~the~~ *a* county jail for not more than one year.

(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in the county jail for not more than one year.

SEC. 14. Section 5536.5 of the Business and Professions Code is amended to read:

5536.5. Any person who violates subdivision (a) of Section 5536 in connection with the offer or performance of architectural services for the repair of damage to a residential or nonresidential

structure caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars ($1,000), or by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by both the fine and imprisonment.

SEC. 15. Section 6126 of the Business and Professions Code is amended to read:

6126. (a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or *in* a county jail *for a period not to exceed six months*. However, any person who has been involuntarily enrolled as an inactive member of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of

a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or *in* a county jail *for a period not to exceed six months*.

(c) The willful failure of a member of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or *in* a county jail *for a period not to exceed six months*.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.

SEC. 16. Section 6153 of the Business and Professions Code is amended to read:

6153. Any person, firm, partnership, association, or corporation violating subdivision (a) of Section 6152 is punishable, upon a first conviction, by imprisonment in a county jail for not more than one year or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine. Upon a second or subsequent conviction, a person, firm, partnership, association, or corporation is punishable by imprisonment in a county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine.

Any person employed either as an officer, director, trustee, clerk, servant or agent of this state or of any county or other municipal corporation or subdivision thereof, who is found guilty of violating any of the provisions of this article, shall forfeit the right to his office and employment in addition to any other penalty provided in this article.

SEC. 17. Section 6788 of the Business and Professions Code is amended to read:

6788. Any person who violates any provision of subdivisions (a) to (i), inclusive, of Section 6787 in connection with the offer or performance of engineering services for the repair of damage to a residential or nonresidential structure caused by a disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the

United States, shall be punished by a fine up to ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars ($1,000), or by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by both the fine and imprisonment.

SEC. 18. Section 7028.16 of the Business and Professions Code is amended to read:

7028.16. A person who engages in the business or acts in the capacity of a contractor, without having a license therefor, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or for two or three years, or by both that fine and imprisonment, or by a fine up to one thousand dollars ($1,000), or by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by both that fine and imprisonment. In addition, a person who utilized the services of the unlicensed contractor is a victim of crime regardless of whether that person had knowledge that the contractor was unlicensed.

SEC. 19. Section 7739 of the Business and Professions Code is amended to read:

7739. Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in ~~the~~ *a* county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars ($500), or by both imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686).

SEC. 20. Section 10238.6 of the Business and Professions Code is amended to read:

10238.6. Any person who does any of the following acts is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one (1) year or by both ~~such~~ *that* fine and imprisonment.

(a) In any application to the commissioner or in any proceeding before him, or in any examination, audit or investigation made by him or on his authority, knowingly makes any false statement or representation, or, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation in a required report.

(b) Issues, circulates or publishes, or causes to be issued, circulated or published any advertisement, pamphlet, prospectus or circular concerning any real property security which contains any statement that is false or misleading, or otherwise likely to deceive a reader thereof, with knowledge that it contains such false, misleading or deceptive statement.

(c) In any respect willfully violates or fails to comply with any provision of this article, or willfully violates or fails, omits or neglects to obey, observe or comply with any order, decision, demand, requirement or permit, or any part or provisions thereof, of the commissioner under this article.

(d) With one or more other persons, conspires to violate any permit or order issued by the commissioner of any provision of this article.

SEC. 21. Section 11020 of the Business and Professions Code is amended to read:

11020. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report which is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a*

county jail not exceeding one year, or by both that fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

SEC. 22. Section 11023 of the Business and Professions Code is amended to read:

11023. Any person who violates Section 11010, 11010.1, 11010.8, 11013.1, 11013.2, 11013.4, 11018.2, 11018.7, 11018.9, 11018.10, 11018.11, 11019, or 11022 is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by both that fine and imprisonment.

SEC. 23. Section 11286 of the Business and Professions Code is amended to read:

11286. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report that is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by both the fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

SEC. 24. Section 11287 of the Business and Professions Code is amended to read:

11287. Any person who violates Section 11226, 11227, 11234, 11244, 11245, or 11283, is guilty of a public offense punishable by a fine not to exceed ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or in a county jail not exceeding one year, or by both the fine and imprisonment.

SEC. 25. Section 11320 of the Business and Professions Code is amended to read:

11320. No person shall engage in federally related real estate appraisal activity governed by this part or assume or use the title of or any title designation or abbreviation as a licensed appraiser in this state without first obtaining a license as defined in Section 11302. Any person who willfully violates this provision is guilty of a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. The possession of a license issued pursuant to this part does not preempt the application of other statutes including the requirement for specialized training or licensure pursuant to Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

SEC. 26. Section 16755 of the Business and Professions Code is amended to read:

16755. (a) Any violation of this chapter is a conspiracy against trade, and any person who engages in any such conspiracy or takes part therein, or aids or advises in its commission, or who as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carries out any of the stipulations, purposes, prices, rates, or furnishes any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, is punishable, as follows:

(1) If the violator is a corporation, by a fine of not more than one million dollars ($1,000,000) or the applicable amount under paragraph (3), whichever is greater.

(2) If the violator is an individual, by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years, by imprisonment for not more than one year in a county jail, by a fine of not more than the greater of two hundred fifty thousand dollars ($250,000), a fine of the applicable amount under paragraph (3), or by both a fine and imprisonment.

(3) If any person derives pecuniary gain from a violation of this chapter, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than an amount equal to the amount of the gross gain multiplied by two

or an amount equal to the amount of the gross loss multiplied by two, whichever is applicable.

(b) Any action pursuant to this section may be commenced at any time within four years after the commission of the last act comprising a part of any violation. No cause of action barred under existing law on the effective date of the amendment of this section at the 1977–78 Regular Session of the Legislature shall be revived by such amendment.

(c) Subject to Section 13521 of the Penal Code, all moneys received by any court in payment of any fine or civil penalty imposed pursuant to this section shall, as soon as practicable after receipt thereof, be deposited with the county treasurer of the county in which the court is situated. Amounts so deposited shall be paid as soon as practicable as follows: 100 percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of said court to be deposited in the State Treasury on order of the Controller if the moneys received resulted from an action initiated and prosecuted by the Attorney General. If the action was initiated and prosecuted by a district attorney then 100 percent shall be paid as soon as practicable to the treasurer of the county in which the prosecution is conducted. If the action was initiated and prosecuted jointly by the Attorney General and a district attorney or jointly by more than one district attorney, such amounts shall be paid to the State Treasurer and to the treasurer(s) of the county or counties participating in the prosecution in a proportion agreed upon by the agencies jointly prosecuting such case and as approved by the court.

SEC. 27. Section 17511.9 of the Business and Professions Code is amended to read:

17511.9. Except as provided in Section 17511.8, any person, including, but not limited to, the seller, a salesperson, agent or representative of the seller, or an independent contractor, who willfully violates any provision of this article or who directly or indirectly employs any device, scheme, or artifice to deceive in connection with the offer or sale by any telephonic seller, or who willfully, directly, or indirectly, engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with a sale by any telephonic seller shall, upon conviction, be punished as follows:

(a) By a fine not exceeding ten thousand dollars ($10,000) for each unlawful transaction.

(b) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in ~~the~~ *a* county jail for not more than one year.

(c) By both the fine and imprisonment specified in subdivisions (a) and (b).

SEC. 28. Section 17550.19 of the Business and Professions Code is amended to read:

17550.19. In addition to any civil penalties provided in this division, violation of this article is punishable as follows:

(a) As a misdemeanor by a fine of not more than ten thousand dollars ($10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment for each violation.

(b) In addition, any violation of Section 17550.14 or subdivision (b) or (c) of Section 17550.15 where money or real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates two thousand three hundred fifty dollars ($2,350) or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate nine hundred fifty dollars ($950) in any 12-month period, is punishable either as a misdemeanor or as a felony by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years, by a fine of not more than twenty-five thousand dollars ($25,000), or by both that fine and imprisonment for each violation.

(c) In addition, any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony as provided in this section.

(d) Any violation of Section 17550.15 shall be a misdemeanor and shall be punished as provided in this section. Every act in violation of Section 17550.15 may be prosecuted as a separate and distinct violation and consecutive sentences may be imposed for each violation.

(e) Sellers of travel shall also comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to

preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

SEC. 29. Section 22430 of the Business and Professions Code is amended to read:

22430. (a) No deceptive identification document shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported, or imported or offered to be imported into this state unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) As used in this section, "deceptive identification document" means any document not issued by a governmental agency of this state, another state, or the federal government, which purports to be, or which might deceive an ordinary reasonable person into believing that it is, a document issued by such an agency, including, but not limited to, a driver's license, identification card, birth certificate, passport, or social security card.

(c) Any person who violates or proposes to violate this section may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any person.

(d) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that the deceptive identification document will be used for fraudulent purposes is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 30. Section 25618 of the Business and Professions Code is amended to read:

25618. Every person convicted of a felony for a violation of any of the provisions of this division for which another punishment is not specifically provided for in this division shall be punished

by a fine of not more than ten thousand dollars ($10,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

SEC. 31. Section 892 of the Civil Code is amended to read:

892. (a) Any person who engages in multiple acts of rent skimming is subject to criminal prosecution. Each act of rent skimming comprising the multiple acts of rent skimming shall be separately alleged. A person found guilty of five acts shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by imprisonment in ~~the~~ *a* county jail for not more than one year, by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment. A person found guilty of additional acts shall be separately punished for each additional act by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by imprisonment in ~~the~~ *a* county jail for not more than one year, by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) If a defendant has been once previously convicted of a violation of subdivision (a), any subsequent knowing and willful act of rent skimming shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by imprisonment in ~~the~~ *a* county jail for not more than one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(c) A prosecution for a violation of this section shall be commenced within three years after the date of the acquisition of the last parcel of property that was the subject of the conduct for which the defendant is prosecuted.

(d) The penalties under this section are in addition to any other remedies or penalties provided by law for the conduct proscribed by this section.

SEC. 32. Section 1695.8 of the Civil Code is amended to read:

1695.8. Any equity purchaser who violates any subdivision of Section 1695.6 or who engages in any practice which would operate as a fraud or deceit upon an equity seller shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000), by imprisonment in the county jail for

not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment for each violation.

SEC. 33. Section 1812.125 of the Civil Code is amended to read:

1812.125. (a) Any person who violates subdivision (b) or (c) of Section 1812.116 shall, upon conviction, be fined not more than ten thousand dollars ($10,000) for each violation, or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or imprisoned in *a* county jail for not more than one year, or be punished by both ~~such~~ *that* fine and imprisonment.

(b) Any person who violates any other provision of this title shall be guilty of a misdemeanor.

SEC. 34. Section 1812.217 of the Civil Code is amended to read:

1812.217. Any person, including, but not limited to, the seller, a salesman, agent or representative of the seller or an independent contractor who attempts to sell or lease or sells or leases a seller assisted marketing plan, who willfully violates any provision of this title or employs, directly or indirectly, any device, scheme or artifice to deceive in connection with the offer or sale of any seller assisted marketing plan, or willfully engages, directly or indirectly, in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, lease or sale of any seller assisted marketing plan shall, upon conviction, be fined not more than ten thousand dollars ($10,000) for each unlawful transaction, or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or imprisoned in *a* county jail for not more than one year, or be punished by both ~~such~~ *that* fine and imprisonment.

SEC. 35. Section 2945.7 of the Civil Code is amended to read:

2945.7. Any person who commits any violation described in Section 2945.4 shall be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment for each violation. These penalties are cumulative to any other remedies or penalties provided by law.

SEC. 36. Section 2985.2 of the Civil Code is amended to read:

2985.2. Any person, or the assignee of such person, who sells a parcel of land under a sales contract which is not recorded and who thereafter causes an encumbrance or encumbrances not consented to in writing by the parties upon such property in an amount which, together with existing encumbrances thereon exceeds the amount then due under the contract, or under which the aggregate amount of any periodic payments exceeds the periodic payments due on the contract, excluding any pro rata amount for insurance and taxes, shall be guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail not exceeding one year, or by both ~~such~~ *that* fine and imprisonment.

SEC. 37. Section 2985.3 of the Civil Code is amended to read:

2985.3. Every seller of improved or unimproved real property under a real property sales contract, or his assignee, who knowingly receives an installment payment from the buyer under a real property sales contract at a time when there is then due any payment by the seller, or his assignee, on an obligation secured by an encumbrance on the property subject to the real property sales contract, and who appropriates such payment received from the buyer to a use other than payment of the amount then due on the seller's or assignee's obligation, except to the extent the payment received from the buyer exceeds the amount due from the seller or assignee, is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail not exceeding one year, or by both ~~such~~ *that* fine and imprisonment.

SEC. 38. Section 2255 of the Corporations Code is amended to read:

2255. (a) Every director, officer or agent of any corporation, domestic or foreign, who knowingly receives or acquires possession of any property of the corporation, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation is guilty of a public offense.

(b) Every director, officer, agent or shareholder of any corporation, domestic or foreign, who, with intent to defraud,

destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to the corporation or makes or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the corporation is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail ~~for~~ not exceeding one year, or a fine not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 39. Section 2256 of the Corporations Code is amended to read:

2256. Every officer, agent or clerk of any corporation, domestic or foreign, or any person proposing to organize such a corporation or to increase the capital stock of any such corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation or to investigate its affairs or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not exceeding one year.

SEC. 40. Section 6811 of the Corporations Code is amended to read:

6811. Any director of any corporation who concurs in any vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any distribution with the design of defrauding creditors, members, or the corporation, is guilty of a crime. Each such crime is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by a fine of not more than one thousand dollars ($1,000) or imprisonment in *a* county jail for not more than one year, or both ~~such~~ *that* fine and imprisonment.

SEC. 41. Section 6814 of the Corporations Code is amended to read:

6814. Every director, officer or agent of any corporation, or any person proposing to organize such a corporation, who knowingly exhibits any false, forged or altered book, paper,

voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation or to investigate its affairs, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not more than one year.

SEC. 42. Section 8812 of the Corporations Code is amended to read:

8812. Any director of any corporation who concurs in any vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any distribution of assets, except in the case and in the manner allowed by this part, either with the design of defrauding creditors or members or of giving a false appearance to the value of the membership and thereby defrauding purchasers is guilty of a crime. Each such crime is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine of not more than one thousand dollars ($1,000) or imprisonment in *a* county jail for not more than one year, or by both ~~such~~ *that* fine and imprisonment.

SEC. 43. Section 8815 of the Corporations Code is amended to read:

8815. Every director, officer or agent of any corporation, or any person proposing to organize such a corporation who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation or to investigate its affairs, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not exceeding one year.

SEC. 44. Section 12672 of the Corporations Code is amended to read:

12672. Any director of any corporation who concurs in any vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any distribution of assets, except in the case and in the manner allowed by this part, either with the design of defrauding creditors or

members or of giving a false appearance to the value of the membership and thereby defrauding purchasers is guilty of a crime. Each such crime is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine of not more than one thousand dollars ($1,000), or imprisonment in *a* county jail for not more than one year, or by both ~~such~~ *that* fine and imprisonment.

SEC. 45. Section 12675 of the Corporations Code is amended to read:

12675. Every director, officer or agent of any corporation, or any person proposing to organize such a corporation who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation or to investigate its affairs, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not exceeding one year.

SEC. 46. Section 22002 of the Corporations Code is amended to read:

22002. (a) Every director, officer, or agent of any joint stock association, who knowingly receives or possesses himself of any property of the association, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the association, is guilty of a public offense.

(b) Every director, officer, agent, or member of any joint stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to the association, or makes or concurs in making any false entries, or omits or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the association, is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 47. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for in subdivision (b), any person who willfully violates any provision of this division, or who willfully violates any rule or order under this division, shall upon conviction be fined not more than one million dollars ($1,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both that fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or be punished by both that fine and imprisonment.

(c) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than twenty-five million dollars ($25,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 48. Section 25541 of the Corporations Code is amended to read:

25541. (a) Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer, purchase, or sale of any security or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any security shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or be punished by both that fine and imprisonment.

(b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates subdivision (a) shall upon conviction be fined not more than twenty-five million dollars ($25,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 49. Section 27202 of the Corporations Code is amended to read:

27202. Every individual who willfully violates Section 27101 is guilty of a public offense punishable by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by both fine and imprisonment.

SEC. 50. Section 28880 of the Corporations Code is amended to read:

28880. Any person who willfully violates any provision under this chapter shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both that fine and imprisonment.

SEC. 51. Section 29102 of the Corporations Code is amended to read:

29102. The felonies specified in this chapter are punishable, for each offense, if the offender is a corporation, by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or, if the offender is not a corporation, by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both ~~such~~ *that* imprisonment and fine.

SEC. 52. Section 29550 of the Corporations Code is amended to read:

29550. (a) Except as provided in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of*

Section 1170 of the Penal Code, or in a county jail for not more than one year, or be punished by both a fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 29536 shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or be punished by both ~~a~~ *that* fine and imprisonment.

(c) One-half of the fines collected under this section shall be paid to the State Corporations Fund to be used for the support of this division. The remainder of the fines collected under this section shall be paid to the state or local agency which brought the criminal prosecution.

SEC. 53. Section 31410 of the Corporations Code is amended to read:

31410. Any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than one hundred thousand dollars ($100,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both that fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

SEC. 54. Section 31411 of the Corporations Code is amended to read:

31411. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise shall upon conviction be fined not more than one hundred thousand dollars ($100,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both that fine and imprisonment.

SEC. 55. Section 35301 of the Corporations Code is amended to read:

35301. Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title, or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both *that fine and imprisonment*.

SEC. 56. Section 7054 of the Education Code is amended to read:

7054. (a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(c) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in ~~the~~ *a* county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both, or imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years.

SEC. 57. Section 18002 of the Elections Code is amended to read:

18002. Every person charged with the performance of any duty under any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his or her official capacity, knowingly and fraudulently acts in contravention or violation of any of those laws, is, unless a different punishment is

prescribed by this code, punishable by fine not exceeding one thousand dollars ($1,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or by both *that fine and imprisonment*.

SEC. 58. Section 18100 of the Elections Code is amended to read:

18100. (a) Every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail for not more than one year.

(b) Every person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail for not more than one year. For purposes of this subdivision, "nonexistent person" includes, but is not limited to, deceased persons, animals, and inanimate objects.

SEC. 59. Section 18101 of the Elections Code is amended to read:

18101. Every person who knowingly and willfully completes, or causes or procures the completion of, in whole or in part, an affidavit of registration or a voter registration card, with the intent to cause the registration or reregistration as a voter of a fictitious person or of any person who has not requested registration or reregistration as a voter, is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail for not more than one year.

SEC. 60. Section 18102 of the Elections Code is amended to read:

18102. Any deputy elections official or registration elections official who knowingly registers a nonexistent person, knowingly registers a person under a false name or address, or knowingly

registers a person who is ineligible to register is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in *a* county jail for not more than one year.

SEC. 61. Section 18106 of the Elections Code is amended to read:

18106. Every person is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in ~~the~~ *a* county jail for not more than one year who, without the specific consent of the affiant, willfully and with the intent to affect the affiant's voting rights, causes, procures, or allows the completion, alteration, or defacement of the affiant's party affiliation declaration contained in an executed, or partially executed, affidavit of registration pursuant to subdivision (h) of Section 2150 and Section 2151.

This section shall not apply to a county elections official carrying out his or her official duties.

SEC. 62. Section 18200 of the Elections Code is amended to read:

18200. Every person who subscribes to any nomination petition a fictitious name, or who intentionally subscribes thereto the name of another, or who causes another to subscribe a fictitious name to a nomination petition, is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 63. Section 18201 of the Elections Code is amended to read:

18201. Any person who falsely makes or fraudulently defaces or destroys all or any part of a nomination paper, is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years or by both ~~the~~ *that* fine and imprisonment.

SEC. 64. Section 18203 of the Elections Code is amended to read:

18203. Any person who files or submits for filing a nomination paper or declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years or by both ~~the~~ *that* fine and imprisonment.

SEC. 65. Section 18204 of the Elections Code is amended to read:

18204. Any person who willfully suppresses all or any part of a nomination paper or declaration of candidacy either before or after filing is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years or by both ~~the~~ *that* fine and imprisonment.

SEC. 66. Section 18205 of the Elections Code is amended to read:

18205. A person shall not directly or through any other person advance, pay, solicit, or receive or cause to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office. Violation of this section shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 67. Section 18310 of the Elections Code is amended to read:

18310. A person shall not directly or through any other person pay or receive any money or other valuable consideration before, during, or after an election in order to reward any person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. A violation of this section shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 68. Section 18311 of the Elections Code is amended to read:

18311. Every person is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years who:

(a) Gives or offers a bribe to any officer or member of any political convention, committee, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom the bribe is given or offered to be more favorable to one candidate than another.

(b) Being a member of any of the bodies mentioned in this section receives or offers to receive any bribe described in subdivision (a).

SEC. 69. Section 18400 of the Elections Code is amended to read:

18400. A person who makes, uses, keeps, or furnishes to others, paper or cards watermarked or overprinted in imitation of ballot paper or ballot cards is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two or three years, or by both ~~the~~ *that* fine and imprisonment.

SEC. 70. Section 18403 of the Elections Code is amended to read:

18403. Any person other than an elections official or a member of the precinct board who receives a voted ballot from a voter or who examines or solicits the voter to show his or her voted ballot is punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment. This section shall not apply to persons returning a vote by mail ballot pursuant to Sections 3017 and 3021 or persons assisting a voter pursuant to Section 14282.

SEC. 71. Section 18502 of the Elections Code is amended to read:

18502. Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 72. Section 18520 of the Elections Code is amended to read:

18520. A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

(a) Refrain from voting.

(b) Vote for any particular person.

(c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 73. Section 18521 of the Elections Code is amended to read:

18521. A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

(a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.

(b) Remained away from the polls.

(c) Refrained or agreed to refrain from voting.

(d) Induced any other person to:

(1) Remain away from the polls.

(2) Refrain from voting.

(3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 74. Section 18522 of the Elections Code is amended to read:

18522. Neither a person nor a controlled committee shall directly or through any other person or controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:

(a) Induce any voter to:

(1) Refrain from voting at any election.

(2) Vote or refrain from voting at an election for any particular person or measure.

(3) Remain away from the polls at an election.

(b) Reward any voter for having:

(1) Refrained from voting.

(2) Voted for any particular person or measure.

(3) Refrained from voting for any particular person or measure.

(4) Remained away from the polls at an election.

Any person or candidate violating this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 75. Section 18523 of the Elections Code is amended to read:

18523. A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election, or knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Any person violating this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 76. Section 18524 of the Elections Code is amended to read:

18524. A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, will be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of that person or to induce that person to vote for any particular person or measure.

Any person violating this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 77. Section 18540 of the Elections Code is amended to read:

18540. (a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 78. Section 18544 of the Elections Code is amended to read:

18544. (a) Any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, who is stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate city or county elections official is punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) An unarmed uniformed guard or security personnel who is at the polling place to cast his or her vote.

(2) A peace officer who is conducting official business in the course of his or her public employment or who is at the polling place to cast his or her vote.

(3) A private guard or security personnel hired or arranged for by a city or county elections official.

(4) A private guard or security personnel hired or arranged for by the owner or manager of the facility or property in which the polling place is located if the guard or security personnel is not hired or arranged solely for the day on which an election is held.

SEC. 79. Section 18545 of the Elections Code is amended to read:

18545. Any person who hires or arranges for any other person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official is punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment. This section shall not apply to the owner or manager of the facility or property in which the polling place is located if the private guard or security personnel is not hired or arranged solely for the day on which the election is held.

SEC. 80. Section 18560 of the Elections Code is amended to read:

18560. Every person is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in *a* county jail not exceeding one year, who:

(a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.

(b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.

(c) Impersonates or attempts to impersonate a voter at an election.

SEC. 81. Section 18561 of the Elections Code is amended to read:

18561. Every person is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years who:

(a) Procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote.

(b) Aids or abets in the commission of any of the offenses mentioned in Section 18560.

SEC. 82. Section 18564 of the Elections Code is amended to read:

18564. Any person is guilty of a felony, punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years who, before or during an election:

(a) Tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes.

(b) Interferes or attempts to interfere with the secrecy of voting or ballot tally software program source codes.

(c) Knowingly, and without authorization, makes or has in his or her possession a key to a voting machine that has been adopted and will be used in elections in this state.

(d) Willfully substitutes or attempts to substitute forged or counterfeit ballot tally software program source codes.

SEC. 83. Section 18566 of the Elections Code is amended to read:

18566. Every person is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years who:

(a) Forges or counterfeits returns of an election purported to have been held at a precinct where no election was in fact held.

(b) Willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct where an election was actually held.

SEC. 84. Section 18567 of the Elections Code is amended to read:

18567. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any official or unofficial returns, or who alters the returns, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

SEC. 85. Section 18568 of the Elections Code is amended to read:

18568. Every person is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or by both ~~the~~ *that* fine and imprisonment, who:

(a) Aids in changing or destroying any poll list or official ballot.

(b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom.

(c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted.

(d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with intent to change the result of the election, or allows another to do so, when in his or her power to prevent it.

(e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns.

(f) Removes any unvoted ballots from the polling place before the completion of the ballot count.

SEC. 86. Section 18573 of the Elections Code is amended to read:

18573. Every person is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years who furnishes any voter wishing to vote, who cannot read, with a ballot, informing or giving that voter to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any voter at any election

by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for.

SEC. 87. Section 18575 of the Elections Code is amended to read:

18575. Every person is guilty of a felony, and on conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three or four years, who at any election:

(a) Without first having been appointed and qualified, acts as an election officer.

(b) Not being an election officer, performs or discharges any of the duties of an election officer in regard to the handling, counting, or canvassing of any ballots.

SEC. 88. Section 18578 of the Elections Code is amended to read:

18578. Any person who applies for, or who votes or attempts to vote, a vote by mail ballot by fraudulently signing the name of a fictitious person, or of a regularly qualified voter, or of a person who is not qualified to vote, is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, by a fine not exceeding one thousand dollars ($1,000), or by both ~~the~~ *that* fine and imprisonment.

SEC. 89. Section 18611 of the Elections Code is amended to read:

18611. Every person is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment, who circulates or causes to be circulated any initiative, referendum, or recall petition, knowing it to contain false, forged, or fictitious names.

SEC. 90. Section 18613 of the Elections Code is amended to read:

18613. Every person who subscribes to any initiative, referendum, or recall petition a fictitious name, or who subscribes thereto the name of another, or who causes another to subscribe such a name to that petition, is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

SEC. 91. Section 18614 of the Elections Code is amended to read:

18614. Every person is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment, who files in the office of the elections official or other officer designated by law to receive the filing, any initiative, referendum, or recall petition to which is attached, appended or subscribed any signature which the person filing the petition knows to be false or fraudulent or not the genuine signature of the person whose name it purports to be.

SEC. 92. Section 18620 of the Elections Code is amended to read:

18620. Every person who seeks, solicits, bargains for, or obtains any money, thing of value, or advantage of or from any person, firm, or corporation for the purpose or represented purpose of fraudulently inducing, persuading, or seeking the proponent or proponents of any initiative or referendum measure or recall petition to (a) abandon the measure or petition, (b) fail, neglect, or refuse to file in the office of the elections official or other officer designated by law, within the time required by law, the initiative or referendum measure or recall petition after securing the number of signatures required to qualify the measure or petition, (c) stop the circulation of the initiative or referendum measure or recall petition, or (d) perform any act that will prevent or aid in preventing the initiative or referendum measure or recall petition from qualifying as an initiative or referendum measure, or the recall petition from resulting in a recall election, is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment.

SEC. 93. Section 18621 of the Elections Code is amended to read:

18621. Any proponent of an initiative or referendum measure or recall petition who seeks, solicits, bargains for, or obtains any money or thing of value of or from any person, firm, or corporation

for the purpose of abandoning the same or stopping the circulation of petitions concerning the same, or failing or neglecting or refusing to file the measure or petition in the office of the elections official or other officer designated by law within the time required by law after obtaining the number of signatures required under the law to qualify the measure or petition, or performing any act that will prevent or aid in preventing the initiative, referendum or recall proposed from qualifying as an initiative or referendum measure, or resulting in a recall election is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment.

SEC. 94. Section 18640 of the Elections Code is amended to read:

18640. Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who solicits signatures to qualify the measure or petition and accepts any payment therefor and who fails to surrender the measure or petition to the proponents thereof for filing is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment.

SEC. 95. Section 18660 of the Elections Code is amended to read:

18660. Every person is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment, who makes any false affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

SEC. 96. Section 18661 of the Elections Code is amended to read:

18661. Every public official or employee is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~

that fine and imprisonment, who knowingly makes any false return, certification or affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

SEC. 97. Section 18680 of the Elections Code is amended to read:

18680. Every person who is entrusted with money or things of value for the purpose of promoting or defeating any initiative, referendum, or recall petition or any measure that has qualified for the ballot is a trustee of the money or things of value. If a person wrongfully appropriates the money or things of value to any use or purpose not in the due and lawful execution of the trust, the person shall be punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or in a county jail not exceeding one year, or by both ~~the~~ *that* fine and imprisonment. The following expenses are within the due and lawful execution of the trust:

(a) Securing signatures to initiative, referendum, or recall petitions.

(b) Circulating initiative, referendum, or recall petitions.

(c) Holding and conducting public meetings.

(d) Printing and circulating prior to an election:

(1) Specimen ballots.

(2) Handbills.

(3) Cards.

(4) Other papers.

(e) Advertising.

(f) Postage.

(g) Expressage.

(h) Telegraphing.

(i) Telephoning.

(j) All salaries and expenses of:

(1) Campaign managers.

(2) Lecturers.

(3) Solicitors.

(4) Agents.

(5) All persons employed in transacting business at headquarters or branch offices, if the business transacted is related to promoting or defeating an initiative, referendum, or recall petition or any measure which has qualified for the ballot.

(k) Maintaining headquarters and branch offices.

(*l*) Renting of rooms for the transaction of the business of an association.

(m) Attorney's fees and other costs in connection with litigation where the litigation arises directly out of any of the following:

(1) Activities related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

(2) The enactment, by the initiative process, of any ordinance, charter amendment, statute, or constitutional amendment.

(3) An election contest or recount.

(4) A violation of state or local campaign, disclosure, or election laws.

The amendment of this section by adding subdivision (m) thereto, made at the 1991–92 Regular Session of the Legislature, does not constitute a change in, but is declaratory of, the existing law.

Expenses for food, clothing, shelter and other personal needs of the trustee are not within the due and lawful execution of the trust. However, expenses for travel and necessary accommodations for the trustee are within the due and lawful execution of the trust, if the travel and accommodations are related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

SEC. 98. Section 3510 of the Financial Code is amended to read:

3510. It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any person violating this section shall be punished by a fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment, in the discretion of the court.

SEC. 99. Section 3532 of the Financial Code is amended to read:

3532. Whoever being connected in any capacity with any corporation represents in any way that the State of California is liable for the payment of any bond or other obligation, or the

interest thereon, issued or incurred by any corporation, or that the State of California incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not more than ten thousand dollars ($10,000) and by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 100. Section 5300 of the Financial Code is amended to read:

5300. Every person who willfully violates or willfully fails to comply with any of the provisions of this division is guilty of a public offense. Except where the offense is declared to be a felony or a misdemeanor or a different punishment is prescribed, a person convicted under this section shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

SEC. 101. Section 5302 of the Financial Code is amended to read:

5302. (a) Whoever knowingly violates subdivision (a) or (b) of Section 6525.5 shall be punished by a fine of not more than one million dollars ($1,000,000) for each day the violation continues, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 2, 3, or 4 years, or by both that fine and imprisonment.

(b) Any person who is subject to an order issued pursuant to Section 8201 who knowingly violates the order, directly or indirectly, shall be punished by a fine of not more than one million dollars ($1,000,000) for each day violation continues, by imprisonment ~~in state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 2, 3, or 4 years, or by both that fine and imprisonment.

SEC. 102. Section 5303 of the Financial Code is amended to read:

5303. Any officer, director, employee, or agent of any association who (a) willfully makes or knowingly concurs in the making or publishing of a false or untrue material entry in any book, record, report, statement concerning the business or affairs of the association, or statement of condition or in connection with any transaction of the association, with intent to deceive any officer

or director thereof, or with intent to deceive any agency or examiner, whether private or public, employed or lawfully appointed to examine into the association's condition or to examine into any of the association's affairs or transactions, or with intent to deceive any public officer, office, or board to which the association is required by law to report or that has authority by law to examine into the association's affairs or transactions, (b) with like intent, willfully omits to make a material new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the association in any appropriate book, record, report, or statement of the association, which entry is required to be made by law or generally accepted accounting principles applicable to a savings institution, or (c) with like intent, willfully alters, abstracts, conceals, refuses to allow to be inspected by the commissioner or the commissioner's deputies or examiners, or destroys any books, records, reports, or statements of the association made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by both that fine and imprisonment.

SEC. 103. Section 5304 of the Financial Code is amended to read:

5304. (a) It is unlawful for any person to corruptly give, offer, or promise anything of value to any other person, with intent to influence or reward any institution-affiliated party in connection with any business or transaction of a savings association.

(b) It is unlawful for any institution-affiliated party to corruptly solicit or demand for the benefit of any person, or corruptly accept or agree to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of the savings association.

(c) Any person who violates subdivision (a) or (b) shall be punished by a fine of not more than one million dollars ($1,000,000) or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the value

of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed one thousand dollars ($1,000), the offense shall instead be punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in ~~the~~ *a* county jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

(d) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business or where the amount of money or monetary worth of the thing of value is one hundred dollars ($100) or less.

SEC. 104. Section 5305 of the Financial Code is amended to read:

5305. Any institution-affiliated party who abstracts or willfully misapplies any of the money, funds, or property of the savings association, or willfully misapplies its credit, is guilty of a felony and shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the amount abstracted or willfully misapplied does not exceed two hundred fifty dollars ($250), the offense shall instead be punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in ~~the~~ *a* county jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

SEC. 105. Section 5307 of the Financial Code is amended to read:

5307. Whoever willfully and knowingly makes, issues, circulates, transmits, or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor which is written, printed, reproduced in any manner, or communicated by word of mouth, that is untrue in fact and is directly or by inference false, or malicious in that it is calculated to injure the reputation or business, financial condition, or standing of any association shall be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in ~~the~~ *a* county jail not exceeding one year or ~~in the state prison~~ *pursuant to*

subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment.

SEC. 106. Section 10004 of the Financial Code is amended to read:

10004. Except as expressly provided for in this chapter, any person who, as principal, agent, salesperson, solicitor, or in any other capacity, solicits or conducts in this state the business of selling, disposing of, taking, or soliciting savings accounts of any foreign savings association that has not complied with all the requirements of this chapter, is guilty of a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both ~~a~~ *that* fine and imprisonment.

SEC. 107. Section 12102 of the Financial Code is amended to read:

12102. Any person who willfully violates any provision of this division, or who willfully violates any rule or order under this division, shall, upon conviction, be fined not more than ten thousand dollars ($10,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in a county jail for not more than one year, or be punished by both ~~such~~ *that* fine and imprisonment, but no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 12400.

SEC. 108. Section 14752 of the Financial Code is amended to read:

14752. Except as provided for in Section 14051 and this article, any person who willfully violates any provision of this division, or who willfully violates any rule or order issued pursuant to this division, shall upon conviction be fined not more than ten thousand dollars ($10,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both ~~such~~ *that* fine and imprisonment, but no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not bar the

exercise of the administrative authority of the commissioner provided in Section 14208.

SEC. 109. Section 17700 of the Financial Code is amended to read:

17700. Any person who willfully violates any provision of this division, or who willfully violates any rule or order under this division, shall, upon conviction, be fined not more than ten thousand dollars ($10,000), imprisoned in a county jail for not more than one year, imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or be punished by both that fine and imprisonment, but no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 17423.

SEC. 110. Section 18349.5 of the Financial Code is amended to read:

18349.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of an investment certificate account, an investment certificate holder; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position which is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Industrial loan company" means any corporation which falls within the definitions of Sections 18003 and 18003.5.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner, but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of an industrial loan company" means any director, officer, or employee of the industrial loan company, or any person who participates in the conduct of the business of the industrial loan company. However, "subject person of an industrial loan company" does not include an individual who is a director,

officer, or employee of a controlling person of an industrial loan company unless the individual is a director, officer, or employee of the industrial loan company or participates in the conduct of the industrial loan company.

(5) "Controlling person" means a person who, directly or indirectly, controls an industrial loan company.

(6) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participation in, counseling, aiding or abetting a violation.

(b) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the industrial loan company; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the industrial loan company; or

(C) That the subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the industrial loan company has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or

(B) That the interests of the industrial loan company's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of that violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the industrial loan company.

(c) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order

suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another industrial loan company or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other industrial loan company or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the industrial loan company.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the industrial loan company or the interests of the industrial loan company's account holders that the commissioner issue the order immediately, and

(2) (A) That any of the factors set forth in paragraphs (1) and (2) of subdivision (b) and any of the factors set forth in paragraph (3) of subdivision (c) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner.

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the industrial loan company may pose a material threat to the interest of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company or a former subject of an industrial loan company, from his or her office, if any, with the industrial loan company and prohibiting the person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the industrial loan company:

(A) That the person has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the industrial loan company may pose a material threat to the interests of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company.

(3) The fact that any subject person of an industrial loan company charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file an application for a hearing.

(g) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or

rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of an industrial loan company, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(h) A hearing held pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the views of the parties, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of an industrial loan company or former subject person of an industrial loan company to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any industrial loan company.

(B) To vote any shares or other securities of an industrial loan company having voting rights, for the election of any person as a director of an industrial loan company.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any industrial loan company having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any industrial loan company.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not to exceed one year, or by both ~~such~~ *that* fine and imprisonment.

(3) If the commissioner believes that any person has violated paragraph (1), the commissioner may bring an action in a court of competent jurisdiction petitioning the court to assess that person a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed two thousand five hundred dollars ($2,500) for each violation or, in the case of a continuing violation, two thousand

five hundred dollars ($2,500) for each day for which the violation continues.

In determining the amount of a civil penalty to be assessed under this paragraph, the court shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the court may be relevant.

SEC. 111. Section 18435 of the Financial Code is amended to read:

18435. Except as otherwise provided in this division, any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in ~~the~~ *a* county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 18349.5.

SEC. 112. Section 22753 of the Financial Code is amended to read:

22753. Any person who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in a county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority in Section 22713.

SEC. 113. Section 22780 of the Financial Code is amended to read:

22780. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by

imprisonment in a county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 22713.

SEC. 114. Section 31880 of the Financial Code is amended to read:

31880. Any person who violates any provision of this chapter shall upon conviction be fined not more than ten thousand dollars ($10,000) or be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both ~~such~~ *that* fine and imprisonment.

SEC. 115. Section 50500 of the Financial Code is amended to read:

50500. Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

SEC. 116. Section 12004 of the Fish and Game Code is amended to read:

12004. (a) The punishment for a first conviction of a violation of Section 8685.5, 8685.6, 8685.7, or 8688 is a fine of not more than five thousand dollars ($5,000), or imprisonment in ~~the~~ *a* county jail for a period not to exceed six months, or the revocation of any license issued pursuant to Sections 8032 to 8036, inclusive, or any combination of these penalties.

(b) The punishment for a second or subsequent conviction of a violation of Section 8685.5, 8685.6, 8685.7, or 8688, which offense occurred within five years of another offense which resulted in a conviction of Section 8685.5, 8685.6, 8685.7, or 8688 is a fine of

not more than ten thousand dollars ($10,000), or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or imprisonment in ~~the~~ *a* county jail for a period not to exceed one year, or the revocation of any license issued pursuant to Sections 8032 to 8036, inclusive, or any combination of these penalties.

SEC. 117. Section 12005 of the Fish and Game Code is amended to read:

12005. (a) Notwithstanding Section 12000, and except as otherwise provided in subdivision (c), the punishment for each violation of Section 4758 shall include both of the following:

(1) A fine of two hundred fifty dollars ($250) for each bear part. As used in this paragraph, "bear part" means an individual part or group of like parts of any bear that the defendant knowingly and unlawfully sells, purchases, or possesses for sale. For the purposes of this paragraph, claws, paws, or teeth from a single bear that are knowingly purchased, sold, or possessed for sale with the intent that they be delivered to a single end user shall be considered a single part.

(2) An additional fine of not more than five thousand dollars ($5,000), imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or ~~the~~ *in a* county jail for not more than one year, or both ~~the~~ *that* fine and imprisonment.

(b) If the conviction is for the possession of two bear gall bladders and probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of 30 days shall be served in ~~the~~ *a* county jail.

(c) (1) The possession of three or more bear gall bladders is punishable by both of the following:

(A) The fine specified in paragraph (1) of subdivision (a).

(B) An additional fine of not more than ten thousand dollars ($10,000), imprisonment in ~~the~~ *a* county jail for not more than one year, or both that fine and imprisonment.

(2) If probation is granted, or the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of three months shall be served in ~~the~~ *a* county jail.

(d) Consecutive sentences shall be imposed for separate violations of this section.

SEC. 118. Section 17701 of the Food and Agricultural Code is amended to read:

17701. A violation of Section 17551 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 119. Section 18932 of the Food and Agricultural Code is amended to read:

18932. Any person who is found guilty of violating any of the provisions of this chapter or the regulations promulgated under this chapter is subject to imprisonment in ~~the~~ *a* county jail for not more than one year or a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine, but if the violation is committed after a conviction of such person under this section has become final, or the violation is committed with intent to defraud or mislead, the person shall be subject to imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or a fine of not more than ten thousand dollars ($10,000), or both ~~such~~ *that* imprisonment and fine.

SEC. 120. Section 18933 of the Food and Agricultural Code is amended to read:

18933. Any person who, as principal or agent, employer or employee, adulterates any meat or meat food product or poultry product intended for sale as human food with the product of an animal which has died otherwise than by slaughter or the product of an animal which has not been slaughtered under inspection in accordance with this chapter, shall be guilty of a felony punishable by a fine of not less than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both ~~such~~ *that* imprisonment and fine.

SEC. 121. Section 19440 of the Food and Agricultural Code is amended to read:

19440. Any person who is found guilty of violating any of the provisions of this chapter or the rules and regulations promulgated under this chapter is subject to imprisonment in ~~the~~ *a* county jail for not more than one year or a fine of not more than one thousand dollars ($1,000), or both ~~such~~ *that* imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, or the violation is committed with intent to defraud or mislead, the person shall be subject to imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or a fine of not more than ten

thousand dollars ($10,000), or both ~~such~~ *that* imprisonment and fine.

SEC. 122. Section 19441 of the Food and Agricultural Code is amended to read:

19441. Any person who, as principal or agent, employer or employee, adulterates any other meat or meat food product intended for human food with horsemeat or the product of an animal which has died otherwise than by slaughter or the product of an animal slaughtered for pet food in accordance with this chapter, or represents horsemeat or pet food to be any other meat or meat food product, shall be guilty of a felony punishable by a fine of not less than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both.

SEC. 123. Section 80174 of the Food and Agricultural Code is amended to read:

80174. A second conviction shall be punishable by a fine of not less than three hundred dollars ($300), nor more than five thousand dollars ($5,000), for each violation, by imprisonment in a county jail for not more than one year, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment, and each violation shall constitute a separate offense.

Upon the second conviction, all permits issued to the person convicted shall be revoked and the permittee shall be required to surrender any unused tags and seals or wood receipts to the issuing agency and no new or additional permits shall be issued to the permittee at any time in the future from the date of conviction.

SEC. 123.5. Section 1195 of the Government Code is amended to read:

1195. Every officer of the State, or of any county, city, or judicial district who accepts, keeps, retains or diverts for his own use or the use of any other person any part of the salary or fees allowed by law to his deputy, or other subordinate officer, is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

SEC. 124. Section 1368 of the Government Code is amended to read:

1368. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any

material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

SEC. 125. Section 1369 of the Government Code is amended to read:

1369. Every person having taken and subscribed to the oath or affirmation required by this chapter, who while holding office, advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the government of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 126. Section 3108 of the Government Code is amended to read:

3108. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

SEC. 127. Section 3109 of the Government Code is amended to read:

3109. Every person having taken and subscribed to the oath or affirmation required by this chapter, who, while in the employ of, or service with, the state or any county, city, city and county, state agency, public district, or disaster council or emergency organization advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the government of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 128. Section 5954 of the Government Code is amended to read:

5954. Any person who violates this chapter shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of*

Section 1170 of the Penal Code for five years, or be punished by both that fine and imprisonment.

SEC. 129. Section 6200 of the Government Code is amended to read:

6200. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

(a) Steal, remove, or secrete.

(b) Destroy, mutilate, or deface.

(c) Alter or falsify.

SEC. 130. Section 6201 of the Government Code is amended to read:

6201. Every person not an officer referred to in Section 6200, who is guilty of any of the acts specified in that section, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 131. Section 8670.64 of the Government Code is amended to read:

8670.64. (a) A person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge of oil which enters marine waters. For the purposes of this paragraph, “vessel” means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or a person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) (1) A person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in a county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both ~~the~~ *that* fine and imprisonment:

(2) The acts subject to this subdivision are all of the following:

(A) Failing to notify the California Emergency Management Agency in violation of Section 8670.25.5.

(B) Knowingly making a false or misleading marine oil spill report to the California Emergency Management Agency.

(C) Continuing operations for which an oil spill contingency plan is required without an oil spill contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(D) Except as provided in Section 8670.27, knowingly failing to follow the material provisions of an applicable oil spill contingency plan.

SEC. 132. Section 9056 of the Government Code is amended to read:

9056. Any person who shall secure through his influence, knowingly exerted for that purpose, the introduction of any bill, resolution or amendment into the State Legislature and shall thereafter solicit or accept from any person other than a person upon whose request he secured such introduction, any pay or other valuable consideration for preventing or attempting to prevent, the enactment or adoption of such measure, while it retains its original purpose, shall be guilty of a crime and upon conviction thereof shall be punishable by a fine of not exceeding ten thousand dollars ($10,000) or by imprisonment in ~~the~~ *a* county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both ~~such~~ *that* fine and imprisonment.

SEC. 133. Section 27443 of the Government Code is amended to read:

27443. Every person holding the office of public administrator, public guardian, or public conservator and any deputy or agent of such officer is guilty of a crime who:

(a) Purchases, directly or indirectly, the property of any estate or a claim against any estate administered by any public ~~adminstrator~~ *administrator*, public guardian, or public conservator in his official capacity, or

(b) Acts upon any transaction or expenditure in connection with the administration of an estate by the public administrator, public guardian, or public conservator in his official capacity, when he has a financial interest in such transaction or expenditure, or, having knowledge of such interest, is associated in business with anyone who has such an interest.

Subdivisions (a) and (b) shall not be applicable to any act specifically authorized by court order.

Any violation of this section is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*. Upon conviction of this section a person forfeits his office. This section is not intended to preclude prosecution under any other provisions of the criminal law which are otherwise applicable.

SEC. 134. Section 51018.7 of the Government Code is amended to read:

51018.7. (a) Any person who willfully and knowingly violates any provision of this chapter or a regulation issued pursuant thereto shall, upon conviction, be subject, for each offense, to a fine of not more than twenty-five thousand dollars ($25,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

(b) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by federal or state law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than five thousand dollars ($5,000), imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 135. Section 264 of the Harbors and Navigation Code is amended to read:

264. (a) A captain or other person having charge of any steam vessel used for the conveyance of passengers, or of its boilers and engines, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected with the boiler, by which bursting or breaking human life is endangered, is guilty of a felony.

(b) Notwithstanding any other provision of law, a person found guilty of a felony violation of this section shall be subject to a fine not to exceed five thousand dollars ($5,000) or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two or three years, or both that fine and imprisonment.

SEC. 136. Section 310 of the Harbors and Navigation Code is amended to read:

310. Notwithstanding any other provision of law, a person found guilty of a felony violation as provided in this chapter shall be subject to a fine not to exceed five thousand dollars ($5,000) or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two or three years, or both that fine and imprisonment.

SEC. 137. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2, or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in ~~the~~ *a* county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in ~~the~~ *a* county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) (1) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in ~~the~~ *a* county jail for not more than one year, or by both that fine and imprisonment.

(2) In imposing the minimum fine required by this subdivision, the court shall take into consideration the defendant's ability to pay the fine and, in the interest of justice for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars

($1,000) or imprisonment in ~~the~~ *a* county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of subdivision (a) or (b) of Section 192.5 of the Penal Code, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in ~~the~~ *a* county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this paragraph

shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the person's county of residence or employment, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in ~~the~~ *a* county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section

192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in ~~the~~ *a* county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and

the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(k) A person who flees the scene of the crime after committing a violation of subdivision (a), (b), or (c) of Section 192.5 of the Penal Code shall be subject to subdivision (c) of Section 20001 of the Vehicle Code.

(*l*) Any person who violates Section 654.3 is guilty of an infraction punishable by a fine of not more than five hundred dollars ($500) for each separate violation.

SEC. 138. Section 1390 of the Health and Safety Code is amended to read:

1390. Any person who willfully violates any provision of this chapter or of any rule or order thereunder shall upon conviction be fined not more than ten thousand dollars ($10,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, or be punished by both such fine and imprisonment, but no person may be imprisoned for the violation of any rule or order if it is proven that such person had no knowledge of the rule or order.

SEC. 139. Section 1522.01 of the Health and Safety Code is amended to read:

1522.01. (a) Any person required to be registered as a sex offender under Section 290 of the Penal Code shall disclose this fact to the licensee of a community care facility before becoming a client of that facility. A community care facility client who fails to disclose to the licensee his or her status as a registered sex offender shall be guilty of a misdemeanor punishable pursuant to subdivision (a) of Section 1540. The community care facility licensee shall not be liable if the client who is required to register as a sex offender fails to disclose this fact to the community care facility licensee. However, this immunity does not apply if the community care facility licensee knew that the client was required to register as a sex offender.

(b) Any person or persons operating, pursuant to this chapter, a community care facility that accepts as a client an individual who is required to be registered as a sex offender under Section 290 of the Penal Code shall confirm or deny whether any client of the facility is a registered sex offender in response to any person who inquires whether any client of the facility is a registered sex offender and who meets any of the following criteria:

(1) The person is the parent, family member, or guardian of a child residing within a one-mile radius of the facility.

(2) The person occupies a personal residence within a one-mile radius of the facility.

(3) The person operates a business within a one-mile radius of the facility.

(4) The person is currently a client within the facility or a family member of a client within the facility.

(5) The person is applying for placement in the facility, or placement of a family member in the facility.

(6) The person is arranging for a client to be placed in the facility.

(7) The person is a law enforcement officer.

If the community care facility licensee indicates a client is a registered sex offender, the interested person may describe physical characteristics of a client and the facility shall disclose that client's name upon request, if the physical description matches the client. The facility shall also advise the interested person that information about registered sex offenders is available to the public via the Internet Web site maintained by the Department of Justice pursuant to Section 290.46 of the Penal Code.

(c) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(d) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(e) Except as authorized under another provision of law, or to protect a child, use of any of the information disclosed pursuant to this section for the purpose of applying for, obtaining, or denying any of the following, is prohibited:

(1) Health insurance.

(2) Insurance.

(3) Loans.

(4) Credit.

(5) Employment.

(6) Education, scholarships, or fellowships.

(7) Benefits, privileges, or services provided by any business establishment.

(8) Housing or accommodations.

(f) Any use of information disclosed pursuant to this section for purposes other than those provided by subdivisions (a) and (b) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(g) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information disclosed pursuant to this section, the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that information is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(h) The civil and criminal penalty moneys collected pursuant to this section shall be transferred to the Community Care Licensing Division of the State Department of Social Services, upon appropriation by the Legislature.

SEC. 140. Section 1621.5 of the Health and Safety Code is amended to read:

1621.5. (a) It is a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years, for any person to donate blood, body organs or other tissue, semen to any medical center or semen bank that receives semen for purposes of artificial insemination, or breast milk to any medical center or breast milk bank that receives breast milk for purposes of distribution, whether he or she is a paid or a volunteer donor, who knows that he or she has acquired ~~immune deficiency~~ *immunodeficiency* syndrome

(AIDS), as diagnosed by a physician and surgeon, or who knows that he or she has tested reactive to HIV. This section shall not apply to any person who is mentally incompetent or who self-defers his or her blood at a blood bank or plasma center pursuant to subdivision (b) of Section 1603.3 or who donates his or her blood for purposes of an autologous donation.

(b) In a criminal investigation for a violation of this section, no person shall disclose the results of a blood test to detect the etiologic agent of AIDS or antibodies to that agent to any officer, employee, or agent of a state or local agency or department unless the test results are disclosed as otherwise required by law pursuant to any one of the following:

(1) A search warrant issued pursuant to Section 1524 of the Penal Code.

(2) A judicial subpoena or subpoena duces tecum issued and served in compliance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

(3) An order of a court.

(c) For purposes of this section, "blood" means "human whole blood" and "human whole blood derivatives," as defined for purposes of this chapter and includes "blood components," as defined in subdivision (k) of Section 1603.1.

SEC. 141. Section 7051 of the Health and Safety Code is amended to read:

7051. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment or cremation, with intent to sell it or to dissect it, without authority of law, or written permission of the person or persons having the right to control the remains under Section 7100, or with malice or wantonness, has committed a public offense that is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

This section shall not prohibit the removal of foreign materials, pacemakers, or prostheses from cremated remains by an employee of a licensed crematory prior to final processing of ashes. Dental gold or silver, jewelry, or mementos, to the extent that they can be identified, may be removed by the employee prior to final processing if the equipment is such that it will not process these materials. However, any dental gold and silver, jewelry, or

mementos that are removed shall be returned to the urn or cremated remains container, unless otherwise directed by the person or persons having the right to control the disposition.

SEC. 142. Section 7051.5 of the Health and Safety Code is amended to read:

7051.5. Every person who removes or possesses dental gold or silver, jewelry, or mementos from any human remains without specific written permission of the person or persons having the right to control those remains under Section 7100 is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*. The fact that residue and any unavoidable dental gold or dental silver, or other precious metals remain in the cremation chamber or other equipment or any container used in a prior cremation is not a violation of this section.

SEC. 143. Section 8113.5 of the Health and Safety Code is amended to read:

8113.5. (a) Except with the express written permission of the person entitled to control the disposition of the remains, or in the case of a double burial consented to by both parties, no person shall knowingly or willfully inter the remains of more than one body in a single plot, or place a casket or other human remains in an already occupied grave.

(b) Violation of subdivision (a) is a crime punishable as follows:

(1) A first offense, or a second offense not committed within a year of the first, is punishable as a misdemeanor by imprisonment in ~~the~~ *a* county jail not exceeding one year.

(2) A second offense committed within a year of the first offense is punishable as a misdemeanor or a felony by imprisonment in ~~the~~ *a* county jail not exceeding one year, or ~~in state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(3) A third or subsequent offense shall be punishable as a felony by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 144. Section 8785 of the Health and Safety Code is amended to read:

8785. Any person, partnership, or corporation administering, managing, or having responsibility for endowment care or special care funds who violates the provisions of this chapter relating to the collection, investment, or use of those funds shall be punished

either by imprisonment in ~~the~~ *a* county jail for a period not exceeding six months or by fine not exceeding five hundred dollars ($500), or by both such imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years. If the violator is a cemetery licensee or the holder of a certificate of authority, he, she, or it shall be subject to disciplinary action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of the Business and Professions Code.

SEC. 145. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.

(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).
(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).
(36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.
(37) Iodine or tincture of iodine.
(38) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).
(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.
(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall

require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, "proper identification" for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number; license issued by the California Department of Health Services; registration number issued by the Federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the California Department of Justice; driver's license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity

in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) A state-licensed health care facility that administers or furnishes a substance to its patients.

(6) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine,

or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer,

or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 146. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports

within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164; any manufacturer or wholesaler who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice; or any state-licensed health care facility.

(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

SEC. 147. Section 11105 of the Health and Safety Code is amended to read:

11105. (a) It is unlawful for any person to knowingly make a false statement in connection with any report or record required under this article.

(b) (1) Any person who violates this section shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both ~~such~~ *that* fine and imprisonment.

(2) Any person who has been previously convicted of violating this section and who subsequently violates this section shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 148. Section 11153 of the Health and Safety Code is amended to read:

11153. (a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

(b) Any person who knowingly violates this section shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in ~~the~~ *a* county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both ~~a~~ *that* fine and imprisonment.

(c) No provision of the amendments to this section enacted during the second year of the 1981–82 Regular Session shall be construed as expanding the scope of practice of a pharmacist.

SEC. 149. Section 11153.5 of the Health and Safety Code is amended to read:

11153.5. (a) No wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, shall furnish controlled substances for other than legitimate medical purposes.

(b) Anyone who violates this section knowing, or having a conscious disregard for the fact, that the controlled substances are

for other than a legitimate medical purpose shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both ~~a~~ *that* fine and imprisonment.

(c) Factors to be considered in determining whether a wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, furnished controlled substances knowing or having a conscious disregard for the fact that the controlled substances are for other than legitimate medical purposes shall include, but not be limited to, whether the use of controlled substances was for purposes of increasing athletic ability or performance, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes the product.

SEC. 150. Section 11162.5 of the Health and Safety Code is amended to read:

11162.5. (a) Every person who counterfeits a prescription blank purporting to be an official prescription blank prepared and issued pursuant to Section 11161.5, or knowingly possesses more than three counterfeited prescription blanks, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by imprisonment in a county jail for not more than one year.

(b) Every person who knowingly possesses three or fewer counterfeited prescription blanks purporting to be official prescription blanks prepared and issued pursuant to Section 11161.5, shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both *that fine and imprisonment*.

SEC. 151. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any

controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in ~~the~~ *a* county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code.*

(c) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a) or (b), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(d) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

SEC. 152. Section 11351 of the Health and Safety Code is amended to read:

11351. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section

11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

SEC. 153. Section 11351.5 of the Health and Safety Code is amended to read:

11351.5. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale cocaine base which is specified in paragraph (1) of subdivision (f) of Section 11054, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of three, four, or five years.

SEC. 154. Section 11352 of the Health and Safety Code is amended to read:

11352. (a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, six, or nine years.

SEC. 155. Section 11353.5 of the Health and Safety Code is amended to read:

11353.5. Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, a child day care facility, a church, or a

synagogue, or sells or gives away a controlled substance, other than a controlled substance described in Section 11353 or 11380, to a minor upon the grounds of, or within, any school, child day care facility, public playground, church, or synagogue providing instruction in preschool, kindergarten, or any of grades 1 to 12, inclusive, or providing child care services, during hours in which those facilities are open for classes, school-related programs, or child care, or at any time when minors are using the facility where the offense occurs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, or at any time when minors are using the facility where the offense occurs, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

SEC. 156. Section 11353.6 of the Health and Safety Code is amended to read:

11353.6. (a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person, as a full and separately served enhancement to that provided in subdivision (b), shall be punished by imprisonment ~~in the state prison~~ *pursuant to*

subdivision (h) of Section 1170 of the Penal Code for 3, 4, or 5 years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

SEC. 157. Section 11353.7 of the Health and Safety Code is amended to read:

11353.7. Except as authorized by law, and except as provided otherwise in Sections 11353.1, 11353.6, and 11380.1 with respect to playgrounds situated in a public park, any person 18 years of age or older who unlawfully prepares for sale in a public park, including units of the state park system and state vehicular recreation areas, or sells or gives away a controlled substance to a minor under the age of 14 years in a public park, including units of the state park system and state vehicular recreation areas, during hours in which the public park, including units of the state park system and state vehicular recreation areas, is open for use, with knowledge that the person is a minor under the age of 14 years, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, six, or nine years.

SEC. 158. Section 11356 of the Health and Safety Code is amended to read:

11356. As used in this article "felony offense," and "offense punishable as a felony" refer to an offense *prior to July 1, 2011,* for which the law prescribes imprisonment in the state prison, *or for an offense on or after July 1, 2011, imprisonment in either the*

state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

SEC. 159. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, or shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in ~~the~~ *a* county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in ~~the~~ *a* county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars ($500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

SEC. 160. Section 11358 of the Health and Safety Code is amended to read:

11358. Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 161. Section 11359 of the Health and Safety Code is amended to read:

11359. Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 162. Section 11360 of the Health and Safety Code is amended to read:

11360. (a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of two, three or four years.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

SEC. 163. Section 11362 of the Health and Safety Code is amended to read:

11362. As used in this article "felony offense," and offense "punishable as a felony" refer to an offense *prior to July 1, 2011,* for which the law prescribes imprisonment in the state prison, *or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code,* as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

SEC. 164. Section 11366.5 of the Health and Safety Code is amended to read:

11366.5. (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide and who obtains excessive profits from the use of the building, room, space, or enclosure shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

(c) Any person who violates subdivision (a) after previously being convicted of a violation of subdivision (a) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

(d) For the purposes of this section, "excessive profits" means the receipt of consideration of a value substantially higher than fair market value.

SEC. 165. Section 11366.6 of the Health and Safety Code is amended to read:

11366.6. Any person who utilizes a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, four, or five years.

SEC. 166. Section 11366.8 of the Health and Safety Code is amended to read:

11366.8. (a) Every person who possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment shall be punished by imprisonment in a county jail for a term of imprisonment not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Every person who designs, constructs, builds, alters, or fabricates a false compartment for, or installs or attaches a false compartment to, a vehicle with the intent to store, conceal, smuggle, or transport a controlled substance shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years.

(c) The term "vehicle" means any of the following vehicles without regard to whether the vehicles are private or commercial, including, but not limited to, cars, trucks, buses, aircraft, boats, ships, yachts, and vessels.

(d) The term "false compartment" means any box, container, space, or enclosure that is intended for use or designed for use to conceal, hide, or otherwise prevent discovery of any controlled substance within or attached to a vehicle, including, but not limited to, any of the following:

(1) False, altered, or modified fuel tanks.

(2) Original factory equipment of a vehicle that is modified, altered, or changed.

(3) Compartment, space, or box that is added to, or fabricated, made, or created from, existing compartments, spaces, or boxes within a vehicle.

SEC. 167. Section 11370.6 of the Health and Safety Code is amended to read:

11370.6. (a) Every person who possesses any moneys or negotiable instruments in excess of one hundred thousand dollars ($100,000) which have been obtained as the result of the unlawful sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058, with knowledge that the moneys or negotiable instruments have been so obtained, and any person who possesses any moneys or negotiable instruments in excess of one hundred thousand dollars ($100,000) which are intended by that person for the unlawful purchase of any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 and who commits an act in substantial furtherance of the unlawful purchase, shall be punished by imprisonment in ~~the~~ *a* county jail for a term not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

(b) In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, when a case charged under subdivision (a) involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the moneys or negotiable instruments were accepted by the attorney with the intent to participate in the unlawful conduct described in subdivision (a) or to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

(c) In determining the guilt or innocence of a person charged under subdivision (a), the trier of fact may consider the following in addition to any other relevant evidence:

(1) The lack of gainful employment by the person charged.

(2) The expert opinion of a qualified controlled substances expert as to the source of the assets.

(3) The existence of documents or ledgers that indicate sales of controlled substances.

SEC. 168. Section 11371 of the Health and Safety Code is amended to read:

11371. Any person who shall knowingly violate any of the provisions of Section 11153, 11154, 11155, or 11156 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both such fine and imprisonment.

SEC. 169. Section 11371.1 of the Health and Safety Code is amended to read:

11371.1. Any person who shall knowingly violate any of the provisions of Section 11173 or 11174 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year.

SEC. 170. Section 11374.5 of the Health and Safety Code is amended to read:

11374.5. (a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years or in the county jail not exceeding one year.

(b) (1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a), or any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law, shall pay a penalty equal to the amount of the actual cost incurred by the state or local agency to remove and dispose of the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the state or local agency requests the prosecuting authority to seek recovery of that cost. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that requested recovery of the cost for the removal action. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Toxic Substances Control has requested recovery of the cost of removing the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance or taking removal action with respect to any release of the hazardous substance, the county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account, which is hereby created in the General Fund in the State Treasury. The Department of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup Account, upon appropriation by the Legislature, to cover the cost of taking removal actions pursuant to Section 25354.5.

(3) If a local agency and the Department of Toxic Substances Control have both requested recovery of removal costs with respect to a hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, the county treasurer shall apportion any

penalty collected among the agencies involved in proportion to the costs incurred.

(c) As used in this section the following terms have the following meaning:

(1) "Dispose" means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) "Hazardous substance" has the same meaning as defined in Section 25316.

(3) "Hazardous waste" has the same meaning as defined in Section 25117.

(4) For purposes of this section, "remove" or "removal" has the same meaning as set forth in Section 25323.

SEC. 171. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.

(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 172. Section 11378 of the Health and Safety Code is amended to read:

11378. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 173. Section 11378.5 of the Health and Safety Code is amended to read:

11378.5. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale phencyclidine or any analog or any precursor of phencyclidine which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) or in subdivision (f), except subparagraph (A) of

paragraph (1) of subdivision (f), of Section 11055, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of three, four, or five years.

SEC. 174. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, six, or nine years.

SEC. 175. Section 11379.5 of the Health and Safety Code is amended to read:

11379.5. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this

state or transport phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, six, or nine years.

SEC. 176. Section 11379.6 of the Health and Safety Code is amended to read:

11379.6. (a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000).

(b) Except when an enhancement pursuant to Section 11379.7 is pled and proved, the fact that a person under 16 years of age resided in a structure in which a violation of this section involving methamphetamine occurred shall be considered a factor in aggravation by the sentencing court.

(c) Except as otherwise provided by law, every person who offers to perform an act which is punishable under subdivision (a) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, four, or five years.

(d) All fines collected pursuant to subdivision (a) shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account, as established by Section 5 of Chapter 1295 of the Statutes of 1987. The transmission to the State Treasury

shall be carried out in the same manner as fines collected for the state by the county.

SEC. 177. Section 11380.7 of the Health and Safety Code is amended to read:

11380.7. (a) Notwithstanding any other provision of law, any person who is convicted of trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), or of a conspiracy to commit trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for the conviction, shall be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for an additional one year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter.

(b) (1) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(2) The additional punishment provided in this section shall not be imposed if any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(c) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment. In determining whether or not to strike the additional punishment, the court shall consider the following factors and any relevant factors in aggravation or mitigation in Rules 4.421 and 4.423 of the California Rules of Court.

(1) The following factors indicate that the court should exercise its discretion to strike the additional punishment unless these factors are outweighed by factors in aggravation:

(A) The defendant is homeless, or is in a homeless shelter or transitional housing.

(B) The defendant lacks resources for the necessities of life.

(C) The defendant is addicted to or dependent on controlled substances.

(D) The defendant’s motive was merely to maintain a steady supply of drugs for personal use.

(E) The defendant was recruited or exploited by a more culpable person to commit the crime.

(2) The following factors indicate that the court should not exercise discretion to strike the additional punishment unless these factors are outweighed by factors in mitigation:

(A) The defendant, in committing the crime, preyed on homeless persons, drug addicts or substance abusers who were seeking treatment, shelter or transitional services.

(B) The defendant's primary motive was monetary compensation.

(C) The defendant induced others, particularly homeless persons, drug addicts and substance abusers, to become involved in trafficking.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Detoxification facility" means any premises, place, or building in which 24-hour residential nonmedical services are provided to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(2) "Drug treatment program" or "drug treatment" has the same meaning set forth in subdivision (b) of Section 1210 of the Penal Code.

(3) "Homeless shelter" includes, but is not limited to, emergency shelter housing, as well as transitional housing, but does not include domestic violence shelters. "Emergency shelter housing" is housing with minimal support services for homeless persons in which residency is limited to six months or less and is not related to the person's ability to pay. "Transitional housing" means housing with supportive services, including self-sufficiency development services, which is exclusively designed and targeted to help recently homeless persons find permanent housing as soon as reasonably possible, limits residency to 24 months, and in which rent and service fees are based on ability to pay.

(4) "Trafficking" means any of the unlawful activities specified in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession or drug use.

SEC. 178. Section 11381 of the Health and Safety Code is amended to read:

11381. As used in this article "felony offense" and offense "punishable as a felony" refer to an offense *prior to July 1, 2011,* for which the law prescribes imprisonment in the state prison, *or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code,* as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

SEC. 179. Section 11383 of the Health and Safety Code is amended to read:

11383. (a) Any person who possesses at the same time any of the following combinations, a combination product thereof, or possesses any compound or mixture containing the chemicals listed in the following combinations, with the intent to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (d) of Section 11054 or subdivision (e) of Section 11055, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1-phenylcyclohexylamine (PCA), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide (PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

SEC. 180. Section 11383.5 of the Health and Safety Code is amended to read:

11383.5. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(b) (1) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture any of the following controlled substances, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(e) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to*

subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(f) Any person who possesses any compound or mixture containing ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years.

(g) For purposes of this section, a "reducing agent" for the purposes of manufacturing methamphetamine means an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

(h) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

SEC. 181. Section 11383.6 of the Health and Safety Code is amended to read:

11383.6. (a) Any person who possesses at the same time any of the following combinations, a combination product thereof, or possesses any compound or mixture containing the chemicals listed in the following combinations, with the intent to sell, transfer, or otherwise furnish those chemicals, combinations, or mixtures to another person with the knowledge that they will be used to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (d) of Section 11054 or subdivision (e) of Section 11055 is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish the isomer to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and

shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1-phenylcyclohexylamine (PCA), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide (PMB) with the intent to sell, transfer, or otherwise furnish the compound or mixture to another person with the knowledge that it will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to sell, transfer or otherwise furnish the immediate precursors to another person with the knowledge that they will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

SEC. 182. Section 11383.7 of the Health and Safety Code is amended to read:

11383.7. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be

punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(b) (1) Any person who possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, with the intent to sell, transfer, or otherwise furnish those chemicals, substances, or products to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish that chemical, product, or substance to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish any of the compounds to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish these substances to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(e) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(f) Any person who possesses any compound or mixture containing ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish that compound or mixture to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment ~~in the state~~

~~prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(g) For purposes of this section, a "reducing agent" for the purposes of manufacturing methamphetamine means an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

(h) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

SEC. 183. Section 12401 of the Health and Safety Code is amended to read:

12401. Every person who is found guilty of a felony as specified in this part is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

SEC. 184. Section 12700 of the Health and Safety Code is amended to read:

12700. (a) Except as provided in Section 12702 and subdivision (b), a person who violates any provision of this part, or any regulations issued pursuant to this part, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or by both that fine and imprisonment.

(b) A person who violates any provision of this part, or any regulations issued pursuant to this part, by possessing dangerous fireworks shall be subject to the following:

(1) A person who possesses a gross weight, including packaging, of less than 25 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or both that fine and imprisonment. Upon a second or subsequent conviction, a person shall be punished by a fine of not less than

one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year or by both that fine and imprisonment.

(2) A person who possesses a gross weight, including packaging, of not less than 25 pounds or more than 100 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment in ~~the~~ *a* county jail for not more than one year, or by a fine of not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(3) A person who possesses a gross weight, including packaging, of not less than 100 pounds or more than 5,000 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or ~~the~~ *a* county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(4) A person who possesses a gross weight, including packaging, of more than 5,000 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or ~~the~~ *a* county jail for not more than one year, or by a fine of not less than ten thousand dollars ($10,000) or more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(c) Subdivision (b) shall not apply to a person who holds and is operating within the scope of a valid license as described in Section 12516 or valid permit as described in Section 12522.

SEC. 185. Section 17061 of the Health and Safety Code is amended to read:

17061. (a) Any person who violates, or causes another person to violate, any provision of this part is guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars ($2,000), or imprisonment for not more than 180 days, or both, for each violation of this part, provided that the violation does not cause personal injury to any person.

(b) Any person who willfully violates, or causes another person to violate, any provision of this part, provided that the violation

causes personal injury to any person, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or in a county jail not exceeding one year, or by a fine of not less than four thousand dollars ($4,000), but not exceeding ten thousand dollars ($10,000), or by both *that* fine and imprisonment for each violation, or each day of a continuing violation, causing personal injury. This subdivision shall not be construed to preclude, or in any way limit, the applicability of any other law in any criminal prosecution.

(c) Any person who violates any provision of this part shall be liable for a civil penalty of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000), for each violation or for each day of a continuing violation. The amount of the civil penalty may be doubled, to a limit of not more than ten thousand dollars ($10,000), for each violation or for each day of a continuing violation if the court determines that the violation was willful, or if the court finds that the person received notice from an enforcement agency within the prior three years regarding any employee housing owned or operated by that person, and the violations are so extensive and of such a nature that the immediate health and safety of the residents or the public is endangered or has been endangered. The enforcement agency, or any person or entity affected by the violation, may institute or maintain an action in the appropriate court to collect any civil penalty arising under this subdivision and may be awarded reasonable costs and attorney's fees incurred in proving the existence of each violation and the liability for the civil penalties.

SEC. 186. Section 18124.5 of the Health and Safety Code is amended to read:

18124.5. Every person who, with intent to defraud, alters, forges, counterfeits, or falsifies any certificate of title, registration card, certificate, registration decal, or permit provided for by this part or any comparable certificate of title, registration card, certificate, decal, insignia, or label, with intent to represent it as issued by the department or who alters, forges, counterfeits, or falsifies with fraudulent intent any endorsement of transfer on a certificate of title, or who with fraudulent intent displays or causes or permits to be displayed or has in his or her possession any blank, incomplete, canceled, suspended, revoked, altered, forged,

counterfeit, or false certificate of title, registration card, certificate, registration decal, or permit or who utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters knowing it to be false, altered, forged, or counterfeited with intent to prejudice, damage, or defraud any person, or who, with fraudulent intent, provides false information regarding an allegedly lost, stolen, damaged, or otherwise unavailable certificate of ownership, certificate of title, registration card, or statement of lien, is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or in ~~the~~ *a* county jail for not more than one year.

SEC. 187. Section 25180.7 of the Health and Safety Code is amended to read:

25180.7. (a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended.

(b) Any designated government employee who obtains information in the course of his or her official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his or her jurisdiction and who knows that the discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within 72 hours, disclose that information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that this disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*. The court may also impose upon the person a fine of not less than five thousand dollars ($5000) or more than twenty-five thousand dollars ($25,000). The felony

conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make that information available to the public without delay.

SEC. 188. Section 25189.5 of the Health and Safety Code is amended to read:

25189.5. (a) The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly disposing or causing the disposal of any hazardous waste, or who reasonably should have known that he or she was disposing or causing the disposal of any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(c) Any person who knowingly transports or causes the transportation of hazardous waste, or who reasonably should have known that he or she was causing the transportation of any hazardous waste, to a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(d) Any person who knowingly treats or stores any hazardous waste at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(e) The court also shall impose upon a person convicted of violating subdivision (b), (c), or (d), a fine of not less than five

thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000) for each day of violation, except as further provided in this subdivision. If the act which violated subdivision (b), (c), or (d) caused great bodily injury, or caused a substantial probability that death could result, the person convicted of violating subdivision (b), (c), or (d) may be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

(f) For purposes of this section, except as otherwise provided in this subdivision, "each day of violation" means each day on which a violation continues. In any case where a person has disposed or caused the disposal of any hazardous waste in violation of this section, each day that the waste remains disposed of in violation of this section and the person has knowledge thereof is a separate additional violation, unless the person has filed a report of the disposal with the department and is complying with any order concerning the disposal issued by the department, a hearing officer, or court of competent jurisdiction.

SEC. 189. Section 25189.6 of the Health and Safety Code is amended to read:

25189.6. (a) Any person who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes, or stores any hazardous waste in a manner which causes any unreasonable risk of fire, explosion, serious injury, or death is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of violation, or by imprisonment in a county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both ~~the~~ *that* fine and imprisonment.

(b) Any person who knowingly, at the time the person takes the actions specified in subdivision (a), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of violation,

and by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for ~~3, 6, or 9~~ *three, six, or nine* years.

SEC. 190. Section 25189.7 of the Health and Safety Code is amended to read:

25189.7. (a) The burning or incineration of any hazardous waste, or the causing thereof, is prohibited when the burning or incineration is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly burning or incinerating, or causing the burning or incineration of, any hazardous waste, or who reasonably should have known that he or she was burning or incinerating, or causing the burning or incineration of, any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(c) The court also shall impose upon a person convicted of violating subdivision (b) a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000) for each day of violation, except as otherwise provided in this subdivision. If the act which violated subdivision (b) caused great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b) may be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

SEC. 191. Section 25190 of the Health and Safety Code is amended to read:

25190. Except as otherwise provided in Sections 25189.5, 25189.6, 25189.7, and 25191, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is, upon conviction, guilty of a misdemeanor and shall be punished by a

fine of not more than one thousand dollars ($1,000) or by imprisonment for up to six months in ~~the~~ *a* county jail or by both that fine and imprisonment.

If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

SEC. 192. Section 25191 of the Health and Safety Code is amended to read:

25191. (a) (1) Any person who knowingly does any of the acts specified in subdivision (b) shall, upon conviction, be punished by a fine of not less than two thousand dollars ($2,000) or more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in ~~the~~ *a* county jail for not more than one year, or by both that fine and imprisonment.

(2) If the conviction is for a second or subsequent violation of subdivision (b), the person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months, or in ~~the~~ *a* county jail for not more than one year, or by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) for each day of violation, or by both that fine and imprisonment.

(3) Each day or partial day that a violation occurs is a separate violation.

(b) A person who does any of the following is subject to the punishment prescribed in subdivision (a):

(1) Makes any false statement or representation in any application, label, manifest, record, report, permit, notice to comply, or other document filed, maintained, or used for the purposes of compliance with this chapter.

(2) Has in his or her possession any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter, that has been altered or concealed.

(3) Destroys, alters, or conceals any record relating to the generation, storage, treatment, transportation, disposal, or handling

of hazardous waste required to be maintained pursuant to this chapter.

(4) Withholds information regarding a real and substantial danger to the public health or safety when that information has been requested by the department, or by a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, and is required to carry out the responsibilities of the department or the authorized local officer or agency pursuant to this chapter in response to a real and substantial danger.

(5) Except as otherwise provided in this chapter, engages in transportation of hazardous waste in violation of Section 25160 or 25161, or subdivision (a) of Section 25163, or in violation of any regulation adopted by the department pursuant to those provisions, including, but not limited to, failing to complete or provide the manifest in the form and manner required by the department.

(6) Except as otherwise provided in this chapter, produces, receives, stores, or disposes of hazardous waste, or submits hazardous waste for transportation, in violation of Section 25160 or 25161 or any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete, provide, or submit the manifest in the form and manner required by the department.

(7) Transports any waste, for which there is provided a manifest, if the transportation is in violation of this chapter or the regulations adopted by the department pursuant thereto.

(8) Violates Section 25162.

(c) (1) The penalties imposed pursuant to subdivision (a) on any person who commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall be imposed only (A) on the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled or (B) on the person who authorizes or causes the transporting, carrying, or handling. These penalties shall not be imposed on the driver of the vehicle, unless the driver is also the owner or lessee of the vehicle or authorized or caused the transporting, carrying, or handling.

(2) If any person other than the person producing the hazardous waste prepares the manifest specified in Section 25160, that other person is also subject to the penalties imposed on a person who

commits any of the acts specified in paragraph (6) of subdivision (b).

(d) Any person who knowingly does any of the following acts, each day or partial day that a violation occurs constituting a separate violation, shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500) for each day of violation, or by imprisonment in the county jail for not to exceed six months, or by both that fine and imprisonment:

(1) Carries or handles, or authorizes the carrying or handling of, a hazardous waste without having in the driver's possession the manifest specified in Section 25160.

(2) Transports, or authorizes the transportation of, hazardous waste without having in the driver's possession a valid registration issued by the department pursuant to Section 25163.

(e) Whenever any person is prosecuted for a violation pursuant to paragraph (5), (6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section 25189.5, the prosecuting attorney may take appropriate steps to make the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled, the driver of the vehicle, or any other person who authorized or directed the loading, maintenance, or operation of the vehicle, who is reasonably believed to have violated these provisions, a codefendant. If a codefendant is held solely responsible and found guilty, the court may dismiss the charge against the person who was initially so charged.

SEC. 193. Section 25395.13 of the Health and Safety Code is amended to read:

25395.13. (a) Any private site manager or member of a private site management team who commits any of the following acts shall be punished, upon conviction, by a fine of not less than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or both that fine and imprisonment, if the private site manager or any member of a private site management team does any of the following:

(1) Knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement that the private site manager or the private site management team submits to the department.

(2) Knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the

private site management team keeps, or is required to keep, pursuant to any law.

(3) Knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the private site manager or the private site management team maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.

(4) Knowingly allows or orders any of the private site manager's or the private site management team's employees, agents, or contractors to do any of the actions specified in paragraphs (1) to (3), inclusive.

(b) Any private site manager or member of a site private management team who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of a violation, by imprisonment in the county jail for not more than one year, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 24, or 36 months, or by both that fine and imprisonment.

(c) Any private site manager or member of a private site management team who knowingly, at the time the manager or member takes any of the actions specified in subdivision (b), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than two hundred fifty thousand dollars ($250,000) for each day of the violation.

(d) Each day that a violation of subdivision (a) occurs, or continues to occur, shall be considered a separate offense. A fine imposed pursuant to subdivision (a) shall not exceed, in the aggregate, twenty-five thousand dollars ($25,000), and the term of imprisonment shall not exceed, in the aggregate, one year.

(e) Notwithstanding any other provision of law, all penalties collected pursuant to this section shall be transferred to the department for deposit in the trust fund for expenditure by the

department, upon appropriation by the Legislature, to administer and enforce this article.

SEC. 194. Section 25515 of the Health and Safety Code is amended to read:

25515. (a) A person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, by imprisonment in ~~the~~ *a* county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months or in ~~the~~ *a* county jail for not more than one year, or by both the fine and imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Notwithstanding subdivision (a), a person who knowingly fails to report, pursuant to Section 25507, an oil spill occurring in waters of the state, other than marine waters, shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) Notwithstanding subdivision (a), a person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state, other than marine waters, shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(d) This section does not preclude prosecution or sentencing under other provisions of law.

SEC. 195. Section 25541 of the Health and Safety Code is amended to read:

25541. Any person or stationary source who knowingly makes any false material statement, representation or certification in any record, report, or other document filed, maintained, or used for the

purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person or stationary source shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years or in ~~the~~ *a* county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

SEC. 196. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than seventy-five thousand dollars ($75,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is punishable by a fine of not more than one hundred twenty-five thousand dollars ($125,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, if the defendant is a

corporation, the maximum fine may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person emits an air contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is punishable by a fine of not more than two hundred fifty thousand dollars ($250,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment, or is punishable by a fine of not more than two hundred fifty thousand dollars ($250,000), or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment. If the defendant is a corporation, the maximum fine may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

(e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.

(f) For the purposes of this section:

(1) "Great bodily injury" means great bodily injury as defined by Section 12022.7 of the Penal Code.

~~(2) "Imprisonment in state prison" means imprisonment in the state prison for 16 months, or two or three years.~~

~~(3)~~

(2) "Unreasonable risk of great bodily injury or death" means substantial probability of great bodily injury or death.

SEC. 197. Section 44209 of the Health and Safety Code is amended to read:

44209. Any person who falsifies any test record or report which has been submitted to any other person, the department, or the state board pursuant to this chapter is subject to punishment by a fine of not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

SEC. 198. Section 100895 of the Health and Safety Code is amended to read:

100895. (a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this article.

(2) Has in his or her possession any record required to be maintained pursuant to this article that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this article.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department's responsibilities pursuant to this article.

(b) A second or subsequent violation of subdivision (a) is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months or in a county jail for not more than one year, by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by both that imprisonment and fine.

(c) An ELAP certified or NELAP accredited laboratory, upon suspension, revocation, or withdrawal of its ELAP certification or NELAP accreditation, shall do all of the following:

(1) Discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, or their materials that contain reference to their past certification or accreditation status.

(2) Return its ELAP certificate or its NELAP accreditation to the department.

(3) Cease all testing of samples for regulatory purposes.

(d) The penalties cited in subdivisions (a) and (b) shall also apply to NELAP accredited laboratories.

SEC. 199. Section 109335 of the Health and Safety Code is amended to read:

109335. The failure of any individual, person, firm, association, or other entity representing himself, or itself, as engaged in the diagnosis, treatment, alleviation, or cure of cancer to comply with

any of the regulations adopted under this article and Article 1 (commencing with Section 109250) is a misdemeanor. A third, and subsequent violations, of this section is a felony, *punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code*.

This article and Article 1 (commencing with Section 109250) shall not apply to any person who depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization, nor practitioner thereof.

SEC. 200. Section 115215 of the Health and Safety Code is amended to read:

115215. (a) Any person who violates this chapter, or rules, regulations, or orders in effect adopted pursuant to this chapter, is guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in ~~the~~ *a* county jail for a period not to exceed 180 days, or by both the fine and imprisonment.

(b) Any person who knowingly disposes or causes the disposal of any radioactive material regulated by this chapter, or who reasonably should have known that the person was disposing or causing the disposal of the material, at a facility within the state that does not have a license for disposal issued by the department pursuant to this chapter, or at any point in the state that is not authorized according to this chapter, or by any other local, state, or federal agency having authority over radioactive materials, and is in violation of this chapter, or any regulation or order adopted pursuant to this chapter, is guilty of a public offense, and upon conviction, may be punished as follows:

(1) If the disposal is found to have caused a substantial danger to the public health or safety, the person may be punished by imprisonment in ~~the~~ *a* county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 24, or 36 months, except as otherwise provided in paragraph (2). The court may also impose, upon a person convicted of violating this subdivision, a fine of not more than one hundred thousand dollars ($100,000) for each day of violation, except as otherwise provided in paragraph (2).

(2) If the act that violated this subdivision caused great bodily injury or caused a substantial probability that death could result, the person convicted may be punished by imprisonment ~~in the~~

~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, five, or seven years and may be fined not more than two hundred fifty thousand dollars ($250,000) for each day of violation.

(c) Any person who knowingly transports or causes the transportation of any radioactive material regulated by this chapter, or who reasonably should have known that the person was causing the transportation of the material, to a facility in the state that does not have a license from the department issued pursuant to this chapter, to any point in the state that is not authorized by this chapter, or to any point in the state that is not authorized by any other local, state, or federal agency having authority over radioactive materials, and is in violation of this chapter, or any regulation or order adopted pursuant to this chapter, is guilty of a public offense and, upon conviction, may be punished as follows:

(1) If the transportation is found to have caused a substantial danger to the public health or safety, the person may be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 24, or 36 months, except as otherwise provided in paragraph (2). The court may also impose, upon a person convicted of violating this subdivision, a fine of not more than one hundred thousand dollars ($100,000) for each day of violation, except as provided by paragraph (2).

(2) If the transportation that violated this subdivision caused great bodily injury or caused a substantial probability that death could result, the person convicted may be punished by imprisonment in the state prison *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, five, or seven years and may be fined not more than two hundred fifty thousand dollars ($250,000) for each day of violation.

(d) Notwithstanding any other provision of this chapter, radioactive materials used in medical treatment or result from medical treatment, that are disposed, stored, handled, or transported in a manner authorized pursuant to this chapter, are exempt from subdivisions (b) and (c).

(e) Notwithstanding subdivision (a), any person who violates any provision of this chapter relating to mammography or regulations adopted pursuant to those provisions is guilty of a misdemeanor and shall, upon conviction thereof, be punished by

a fine not to exceed five thousand dollars ($5,000), per day of offense, or by imprisonment in the county jail not to exceed 180 days, or both the fine and imprisonment.

SEC. 201. Section 116730 of the Health and Safety Code is amended to read:

116730. (a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this chapter.

(2) Has in his or her possession any record required to be maintained pursuant to this chapter that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this chapter.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department's responsibilities pursuant to this chapter in response to an imminent and substantial danger.

(5) Violates an order issued by the department pursuant to this chapter that has a substantial probability of presenting an imminent danger to the health of persons.

(6) Operates a public water system without a permit issued by the department pursuant to this chapter.

(b) A second or subsequent violation of subdivision (a) is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months or imprisonment in a county jail for not more than one year, by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by both that imprisonment and fine.

SEC. 202. Section 116750 of the Health and Safety Code is amended to read:

116750. (a) Any person who tampers with a public water system is guilty of a felony and shall be punished by imprisonment

~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, four, or five years, subject to a fine not to exceed thirty thousand dollars ($30,000), or both.

(b) Any person who tampers with or makes a threat to tamper with a public water system is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years, subject to a fine not to exceed twenty thousand dollars ($20,000), or both.

(c) For purposes of this section, the term "tamper" means either of the following:

(1) To introduce a contaminant into a public water system with the intention of harming persons.

(2) To otherwise interfere with the operation of a public water system with the intention of harming persons.

SEC. 203. Section 118340 of the Health and Safety Code is amended to read:

118340. (a) No person shall, transport, store, treat, dispose, or cause the treatment or disposal of medical waste in a manner not authorized by his or her permit or registration, this part, or the regulations adopted pursuant to this part.

(b) Any person who stores, treats, disposes, or causes the treatment or disposal of medical waste in violation of this part or the regulations adopted pursuant to this part is guilty of a public offense as follows:

(1) For a small quantity generator, a first offense is an infraction and is punishable by a fine of not more than one thousand dollars ($1,000).

(2) For a person other than a small quantity generator, a first offense is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000), or by up to one year in county jail, or by both the fine and imprisonment.

(c) A person who is convicted of a second or subsequent violation of subdivision (a) within three years of the prior conviction shall be punished by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment ~~in state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years, or by a fine of not less than five thousand dollars ($5,000), or more than twenty-five thousand dollars ($25,000), or by both ~~the~~ *that* fine and imprisonment. This section

shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation that operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(d) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this part shall be punished by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for one, two, or three years, or by a fine of not less than five thousand dollars ($5,000), or more than twenty-five thousand dollars ($25,000), or by both ~~the~~ *that* fine and imprisonment.

(e) This section does not apply to a person transporting medical waste who is required to be a registered hazardous waste transporter. Those persons are subject to penalties for violations pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

SEC. 204. Section 131130 of the Health and Safety Code is amended to read:

131130. (a) Any person who willfully sells, keeps for sale, or offers for sale any food, drug, device, or cosmetic knowing, after a written notice from either (1) a manufacturer, wholesaler, distributor, or importer, or (2) the department or a local health officer that the product linked to an outbreak of illness, injury, or product tampering is being ordered removed from sale by the department pursuant to Section 131080, shall, upon conviction, be punished by a fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both a fine and imprisonment.

(b) If a second or subsequent violation is committed after a previous conviction under this section has become final, the person shall be punished by a fine of not less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both a fine and imprisonment.

(c) Notwithstanding any other provision of law, the court may suspend the minimum fines provided for in this section if it determines that there are circumstances in mitigation and the court states on the record its reasons for suspending the minimum fine.

SEC. 205. Section 700 of the Insurance Code is amended to read:

700. (a) A person shall not transact any class of insurance business in this state without first being admitted for that class. Except for the State Compensation Insurance Fund as authorized by Sections 11770 and 11778 to 11780.5, inclusive, admission is secured by procuring a certificate of authority from the commissioner. The certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this state prerequisite to its issue.

(b) The unlawful transaction of insurance business in this state in willful violation of the requirement for a certificate of authority is a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment, and shall be enjoined by a court of competent jurisdiction on petition of the commissioner.

(c) After the issuance of a certificate of authority, the holder shall continue to comply with the requirements as to its business set forth in this code and in the other laws of this state, including, but not limited to, Chapter 5 (commencing with Section 1631), with regard to employees or contractors who solicit, negotiate, or effect insurance.

(d) Where a hearing is held under this section the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(e) The commissioner shall either issue or deny an application for a certificate of authority within 180 calendar days after the date of the application.

(f) The commissioner and his or her authorized representative shall be prohibited from seeking a waiver to extend the 180 calendar day period specified in subdivision (e), nor shall the applicant be permitted to waive that period.

SEC. 206. Section 750 of the Insurance Code is amended to read:

750. (a) Except as provided in Section 750.5, any person acting individually or through his or her employees or agents, who engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance, and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether in the form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customers, is guilty of a crime.

(b) A violation of subdivision (a) is punishable upon a first conviction by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by *that* imprisonment ~~in the state prison~~ and a fine of fifty thousand dollars ($50,000).

(c) Nothing in this section shall prohibit a licensed collection or lien agency from receiving a commission on the collection of delinquent debts nor prohibits the agency from paying its employees a commission for obtaining clients seeking collection on delinquent debts.

(d) Nothing in this section is intended to limit, restrict, or in any way apply to, the rebating of commissions by insurance agents or brokers, as authorized by Proposition 103, enacted by the people at the November 8, 1988, general election.

SEC. 207. Section 833 of the Insurance Code is amended to read:

833. Every person who commits any of the acts specified in this section is guilty of a public offense and punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail not exceeding one year, or by both ~~such~~ *that* fine and imprisonment.

(a) Knowingly authorizing, directing, aiding, causing, or assisting in causing the issuance, execution, or sale of, any security,

in nonconformity with a permit of the commissioner then in effect and authorizing such issuance, or contrary to the provisions of this article.

(b) Knowingly making any false statement or representation in any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him, or by his authority.

(c) With knowledge of the falsity, causing to be filed in the office of the commissioner any false statement or representation concerning an insurer, the property which the insurer then holds or proposes to acquire, the insurer's officers, the insurer's financial condition or other affairs, or the insurer's proposed plan of business.

(d) With knowledge of the falsity of any such statement or representation, causing any security to be issued, executed, or sold without first informing the commissioner of the falsity of such statement in writing.

(e) Directly or indirectly, knowingly causing or assisting in causing any part of the proceeds from the sale of any security to be applied to any purpose contrary to the provisions of the permit authorizing the issuance of such security, or to any purpose in excess of the amount specified in such permit for such purpose.

(f) Selling a security with knowledge that it has been issued or executed in violation of any of the provisions of this article.

(g) Causing a writing concerning a security to be issued, circulated, or published while having knowledge that such matter contains any statement that is false, misleading, or otherwise likely to deceive a reader thereof.

(h) In any respect, willfully violating or failing to comply with any of the provisions of this article.

(i) In any other respect, willfully violating or neglecting to comply with any part of an order or permit of the commissioner under the provisions of this article.

(j) Conspiring with one or more other persons to violate any permit or order issued by the commissioner, or any of the provisions of this article.

SEC. 208. Section 1043 of the Insurance Code is amended to read:

1043. In any proceeding under this article, the commissioner, as conservator or as liquidator, may, subject to the approval of said

court, and subject to such liens as may be necessary mutualize or reinsure the business of such person, or enter into rehabilitation agreements. No commissioner who acts as conservator of such person or who mutualizes, merges or reinsures the business of such person or who enters into rehabilitation agreements affecting such person, and no deputy commissioner who has participated in the administration of the affairs of such person for the commissioner as conservator shall for a period of two years from and after the effective date of such mutualization, reinsurance or rehabilitation become an officer or director of, or serve as an officer or director of, or serve in any position of gain or profit in, any company formed in whole or in part of the assets or funds, or any part of the assets or funds of such mutualized, merged, reinsured or rehabilitated person.

Every person violating this provision is guilty of a public offense and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

Such rehabilitation or reinsurance agreements shall provide that, subsequent to the date thereof and for such period of time as the commissioner may determine, no investment or reinvestment of the assets of the person rehabilitated or reinsured shall be made without first obtaining the written approval of the commissioner.

Every party to such agreement, and every director, officer, agent and employee of such person, and every other person who knowingly in violation thereof directs or aids or assists in causing to be made an investment or reinvestment of any of said assets without first having obtained the written approval of the commissioner, or who makes such investment or reinvestment in nonconformity with the written approval of the commissioner then in effect authorizing such investment or reinvestment, is guilty of a public offense and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail or by a fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 209. Section 1215.10 of the Insurance Code is amended to read:

1215.10. (a) Any insurer that fails to file a statement, report, or request for approval required by this article in a timely manner shall be subject to the late filing fees set forth in Section 924.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Sections 1215.4 and 1215.5, or which violate this article, shall pay, in their individual capacity, a civil forfeiture of not more than fifty thousand dollars ($50,000) per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and any other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this article or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 1215.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if this action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted in the county in which the principal office of the insurer is located, or if such insurer has no such office in the state then by the Attorney General against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this article shall be fined not more than ten thousand dollars ($10,000). Any individual who willfully violates this article shall be fined not more than three thousand dollars ($3,000) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both.

(e) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any materially false statements, reports, or filings with the intent to deceive the commissioner in the performance of his or her duties under this article, upon conviction thereof, shall be fined not more than three thousand dollars ($3,000) or, if the willful violation of this subdivision involves the deliberate perpetration of a fraud upon the commissioner, imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both *that* imprisonment and fine. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

SEC. 210. Section 1764.7 of the Insurance Code is amended to read:

1764.7. Any person who willfully violates Section 1760.5, 1761, 1763, 1764, 1764.1, 1764.2, 1764.3, 1764.4, 1765.1, 1765.2, 1767, or 1780 is guilty of a public offense and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not exceeding one year or by fine not exceeding ten thousand dollars ($10,000), or by both.

SEC. 211. Section 1814 of the Insurance Code is amended to read:

1814. The violation of any foregoing provision of this chapter, or of any rule of the commissioner made pursuant thereto, is a public offense, punishable by fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in the county jail not exceeding one year, or by both ~~such~~ *that* fine and imprisonment.

SEC. 212. Section 1871.4 of the Insurance Code is amended to read:

1871.4. (a) It is unlawful to do any of the following:

(1) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented a knowingly false or fraudulent written or oral material statement in support of, or in opposition to, a claim for compensation for the purpose of

obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit a person in an unlawful act under this section.

(4) Make or cause to be made a knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

For the purposes of this subdivision, "statement" includes, but is not limited to, a notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in ~~the~~ *a* county jail for one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars ($150,000) or double the value of the fraud, whichever is greater, or by both that imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. A person convicted under this section may be charged the costs of investigation at the discretion of the court.

(c) A person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section may not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to a transaction.

SEC. 213. Section 10192.165 of the Insurance Code is amended to read:

10192.165. (a) (1) As prescribed in this chapter, the commissioner shall have the administrative authority to assess penalties against issuers, brokers, agents, and other entities engaged in the business of insurance or any other person or entity for violations of this article.

(2) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this chapter.

(3) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any issuer, agent, broker, or other person or entity engaged in the business of insurance, has violated this article he or she shall make and serve upon the issuer, broker, or other person or entity a notice of hearing. The notice shall state the commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition, or ground upon which the commissioner is holding the hearing and assessing the penalties. The hearing shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the amount of penalties to be paid. The penalties resulting from the hearing shall be paid to the Insurance Fund.

(4) The powers vested in the commissioner by this section shall be additional to any and all powers and remedies vested in the commissioner by law.

(b) (1) Any broker, agent, or other person or entity engaged in the business of insurance, other than an issuer, who violates this article is liable for administrative penalties of no less than two hundred fifty dollars ($250) for the first violation.

(2) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an issuer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for administrative penalties of no less than one thousand dollars ($1,000) and no more than twenty-five thousand dollars ($25,000) for each violation.

(3) Any issuer who violates this article is liable for administrative penalties of no less than two thousand five hundred dollars ($2,500) for the first violation.

(4) Any issuer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for administrative penalties of no less than ten thousand dollars ($10,000) and no more than one hundred thousand dollars ($100,000) for each violation.

(c) (1) Actions for injunctive relief, penalties in the amounts specified in subdivision (a), damages, restitution, and all other remedies provided for in law, may be brought in superior court by the Attorney General, district attorney, or city attorney on behalf of the people of the State of California.

(2) The court shall award reasonable attorney's fees and costs to a prevailing plaintiff who establishes a violation of this article.

(d) In addition to any other applicable penalties, the commissioner may require issuers, agents, brokers, or other persons or entities violating any provision of this article or regulations promulgated pursuant to this article, to cease marketing in this state any Medicare supplement policy or certificate or may require the issuer, agent, broker, or other person or entity to take such actions as are necessary to comply with the provisions of this article, or both.

(e) Any person who knowingly or intentionally violates any provision of this article is guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

(f) (1) The requirements and remedies provided by this article are in addition to any other remedies provided by law.

(2) If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall

not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

SEC. 214. Section 11161 of the Insurance Code is amended to read:

11161. Any person violating Section 11160 is guilty of a felony and punishable by a fine not exceeding ten thousand dollars ($10,000) or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both.

SEC. 215. Section 11162 of the Insurance Code is amended to read:

11162. It is a felony, *punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code,* for any officer, director, agent or employee of any fraternal benefit society to, directly or indirectly, for himself or as partner or agent of others:

(a) Borrow any of the funds of such society.

(b) Become endorser or surety for loans by the society to others.

(c) In any manner be obligor for moneys borrowed or loaned by such society.

SEC. 216. Section 11163 of the Insurance Code is amended to read:

11163. It is a felony, *punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code,* for any officer, trustee, agent or employee of a fraternal benefit society to ask, receive, or consent or agree to receive anything of value for procuring or endeavoring to procure a loan to any person from the trust funds of, or funds belonging to, a fraternal benefit society.

SEC. 217. Section 11760 of the Insurance Code is amended to read:

11760. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance, for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in ~~the~~ *a* county jail for one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or double the value of

the fraud, whichever is greater, or by both *that* imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 218. Section 11880 of the Insurance Code is amended to read:

11880. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in ~~the~~ *a* county jail for one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or double the value of the fraud, whichever is greater, or by both *that* imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 219. Section 12660 of the Insurance Code is amended to read:

12660. Any person who in this state engages in the business of guaranteeing or insuring land values, or who solicits or negotiates in this state for the purpose of, or in any manner aids, any person within or without this state to engage in such business, is guilty of a public offense and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ *a* county jail for not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 220. Section 12845 of the Insurance Code is amended to read:

12845. Any vehicle service contract obligor or administrator that provides vehicle service contract forms to sellers or purchasers, directly or indirectly, and fails to comply with Sections 12815, 12830 and 12835, is guilty of a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding five hundred thousand dollars ($500,000), or both, and shall be enjoined from further violations by a court of competent jurisdiction on petition of the commissioner. This section shall not apply to a seller who is an obligor under vehicle service contracts it sells. The commissioner may issue a cease and desist order pursuant to Section 1065.2 to an obligor or administrator who violates Section 12830 or 12835. The commissioner may issue a cease and desist order pursuant to Section 12921.8 to an obligor or administrator in violation of Section 12815.

SEC. 221. Section 227 of the Labor Code is amended to read:

227. Whenever an employer has agreed with any employee to make payments to a health or welfare fund, pension fund or vacation plan, or other similar plan for the benefit of the employees, or a negotiated industrial promotion fund, or has entered into a collective bargaining agreement providing for these payments, it shall be unlawful for that employer willfully or with intent to defraud to fail to make the payments required by the terms of that agreement. A violation of any provision of this section where the amount the employer failed to pay into the fund or funds exceeds five hundred dollars ($500) shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000),

or by both that imprisonment and fine. All other violations shall be punishable as a misdemeanor.

SEC. 222. Section 6425 of the Labor Code is amended to read:

6425. (a) Any employer and any employee having direction, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, is guilty of a public offense punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine; or by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; and in either case, if the defendant is a corporation or a limited liability company, the fine may not exceed one million five hundred thousand dollars ($1,500,000).

(b) If the conviction is for a violation committed within seven years after a conviction under subdivision (b), (c), or (d) of Section 6423 or subdivision (c) of Section 6430, punishment shall be by imprisonment in state prison for a term of 16 months, two, or three years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment, but if the defendant is a corporation or limited liability company, the fine may not be less than five hundred thousand dollars ($500,000) or more than two million five hundred thousand dollars ($2,500,000).

(c) If the conviction is for a violation committed within seven years after a first conviction of the ~~defendent~~ *defendant* for any crime involving a violation of subdivision (a), punishment shall be by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company, the fine shall not be less than one million dollars ($1,000,000) but may not exceed three million five hundred thousand dollars ($3,500,000).

(d) In determining the amount of fine to be imposed under this section, the court shall consider all relevant circumstances,

including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.

(e) As used in this section, "willfully" has the same definition as it has in Section 7 of the Penal Code. This subdivision is intended to be a codification of existing law.

(f) This section does not prohibit a prosecution under Section 192 of the Penal Code.

SEC. 223. Section 7771 of the Labor Code is amended to read:

7771. Every person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, railroad, vessel, or other mechanical works, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is caused, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

SEC. 224. Section 145 of the Military and Veterans Code is amended to read:

145. A person who, after publication of the proclamation authorized by Section 143, joins, participates or takes any part in a rebellion, insurrection, tumult or riot, or who is party to any conspiracy or combination to resist by force the execution of the laws or who resists or aids in resisting the execution of process in any county or city declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the Governor to quell or suppress an insurrection, is punishable by a fine of not less than one thousand dollars ($1,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 225. Section 1318 of the Military and Veterans Code is amended to read:

1318. Every person who maliciously destroys, cuts, breaks, mutilates, effaces, or otherwise injures, tears down, or removes any veterans' memorial constructed or established pursuant to this

division, or constructed or established by any veterans' association, as defined in subdivision (c) of Section 1260, is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by imprisonment in ~~the~~ *a* county jail for less than one year.

SEC. 226. Section 1672 of the Military and Veterans Code is amended to read:

1672. Any person who is guilty of violating Section 1670 or 1671 is punishable as follows:

(a) If the act or failure to act causes the death of any person, a person violating this section is punishable by death or imprisonment in the state prison for life without possibility of parole. The penalty shall be determined pursuant to the provisions of Sections 190.3 and 190.4 of the Penal Code. If the act or failure to act causes great bodily injury to any person, a person violating this section is punishable by life imprisonment without possibility of parole.

(b) If the act or failure to act does not cause the death of, or great bodily injury to, any person, the person violating this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine. However, if a person so acts or so fails to act with the intent to hinder, delay, or interfere with the preparation of the United States or of any state for defense or for war, or with the prosecution of war by the United States, or with the rendering of assistance by the United States to any other nation in connection with that nation's defense, the person is punishable by a fine of not more than ten thousand dollars ($10,000), imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for three, five, or seven years, or by both that fine and imprisonment.

SEC. 227. Section 1673 of the Military and Veterans Code is amended to read:

1673. Any person who attempts to commit any of the crimes defined by this chapter is punishable as provided in Section 664 of the Penal Code, except that attempts to commit crimes defined by Sections 1670 and 1671 are punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three or four years or by a fine of not more

than ten thousand dollars ($10,000), or both. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this chapter not followed by the commission of the crime, the collection or assemblage of any materials with the intent that they are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, enclosure, or other premises of another with the intent to commit any such crime constitutes an attempt to commit such crime.

SEC. 228. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime ~~which~~ *that* is punishable with death, ~~or~~ by imprisonment in the *state prison, or notwithstanding any other provision of law, by imprisonment in a county jail for more* than one year. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, *either* by imprisonment in the state prison or *imprisonment in a county jail for more than one year, or* by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the *state prison or imprisonment in a county jail for more* than one year.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall

proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, *either* by imprisonment in the state prison *or imprisonment in a county jail for more than one year,* or by fine or imprisonment in the county jail *not exceeding one year*, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

SEC. 229. Section 17.5 is added to the Penal Code, to read:

17.5. (a) The Legislature finds and declares all of the following:

(1) The Legislature reaffirms its commitment to reducing recidivism among criminal offenders.

(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.

(3) Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.

(4) California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.

(6) Community-based corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for low-level offender populations. Each county's Local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders.

(7) Fiscal concerns and programs should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) "Community-based punishment" means evidenced based correctional sanctions and programming other than jail incarceration alone or traditional routine probation supervision. Intermediate sanctions may be provided by local public safety entities directly or through community-based public or private correctional service providers, and include, but are not limited to, the following:

(A) Short-term flash incarceration in jail for a period of not more than 7 days.

(B) Intensive community supervision.

(C) Home detention with electronic monitoring or GPS monitoring.

(D) Mandatory community service.

(E) Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation.

(F) Work, training, or education in a furlough program pursuant to Section 1208.

(G) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2.

(H) Day reporting.

(I) Mandatory residential or nonresidential substance abuse treatment programs.

(J) Mandatory random drug testing.

(K) Mother-infant care programs.

(L) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

(9) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post release supervision.

(b) The provisions of this act are not intended to alleviate state prison overcrowding.

SEC. 230. Section 18 of the Penal Code is amended to read:

18. *(a)* Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony~~, or to be punishable by imprisonment in a state prison,~~ is punishable by imprisonment ~~in any of the state prisons~~ for 16 months, or two or three years~~; provided, however, every~~ *as provided in subdivision (h) of Section 1170.*

(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment ~~in any of the state prisons~~ or by a fine, but without an alternate sentence to the county jail *for a period not exceeding one year*, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

SEC. 231. Section 19.2 of the Penal Code is amended to read:

19.2. In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult

detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of *a crime that specifies a felony punishment pursuant to subdivision (h) of Section 1170 or a conviction of* more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.

SEC. 232. Section 33 of the Penal Code is amended to read:

33. Except in cases where a different punishment is prescribed, an accessory is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 233. Section 38 of the Penal Code is amended to read:

38. Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 234. Section 67.5 of the Penal Code is amended to read:

67.5. (a) Every person who gives or offers as a bribe to any ministerial officer, employee, or appointee of the State of California, county or city therein, or political subdivision thereof, any thing the theft of which would be petty theft is guilty of a misdemeanor.

(b) If the theft of the thing given or offered would be grand theft the offense is a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 235. Section 69 of the Penal Code is amended to read:

69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 236. Section 71 of the Penal Code is amended to read:

71. *(a)* Every person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense punishable as follows:

(1) Upon a first conviction, such person is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail not exceeding one year, or by both ~~such~~ *that* fine and imprisonment.

(2) If ~~such~~ *the* person has been previously convicted of a violation of this section, such previous conviction shall be charged in the accusatory pleading, and if ~~such~~ *that* previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, he *or she* is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

~~As~~

(b) As used in this section, "directly communicated" includes, but is not limited to, a communication to the recipient of the threat by telephone, telegraph, or letter.

SEC. 237. Section 72 of the Penal Code is amended to read:

72. Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city, or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, by a fine of not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine.

As used in this section "officer" includes a "carrier," as defined in subdivision (a) of Section 14124.70 of the Welfare and Institutions Code, authorized to act as an agent for a state board

or officer or a county, city, or district board or officer, as the case may be.

SEC. 238. Section 72.5 of the Penal Code is amended to read:

72.5. (a) Every person who, knowing a claim seeks public funds for reimbursement of costs incurred in attending a political function organized to support or oppose any political party or political candidate, presents such a claim for allowance or for payment to any state board or officer, or to any county, city, or district board or officer authorized to allow or pay such claims, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars ($1,000), or by both such imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, by a fine of not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine.

(b) Every person who, knowing a claim seeks public funds for reimbursement of costs incurred to gain admittance to a political function expressly organized to support or oppose any ballot measure, presents such a claim for allowance or for payment to any state board or officer, or to any county, city, or district board or officer authorized to allow or pay ~~such~~ *those* claims is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, by a fine of not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* imprisonment and fine.

SEC. 239. Section 76 of the Penal Code is amended to read:

76. (a) Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) If the person has been convicted previously of violating this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury upon a jury trial, or by the court upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) Any law enforcement agency that has knowledge of a violation of this section involving a constitutional officer of the state, a Member of the Legislature, or a member of the judiciary shall immediately report that information to the Department of the California Highway Patrol.

(c) For purposes of this section, the following definitions shall apply:

(1) "Apparent ability to carry out that threat" includes the ability to fulfill the threat at some future date when the person making the threat is an incarcerated prisoner with a stated release date.

(2) "Serious bodily harm" includes serious physical injury or serious traumatic condition.

(3) "Immediate family" means a spouse, parent, or child, or anyone who has regularly resided in the household for the past six months.

(4) "Staff of a judge" means court officers and employees, including commissioners, referees, and retired judges sitting on assignment.

(5) "Threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) As for threats against staff or immediate family of staff, the threat must relate directly to the official duties of the staff of the elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner

of the Board of Prison Terms in order to constitute a public offense under this section.

(e) A threat must relate directly to the official duties of a Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

SEC. 240. Section 95 of the Penal Code is amended to read:

95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his or her verdict in, or decision of, any cause or proceeding, pending, or about to be brought before him or her, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, if it is by means of any of the following:

(a) Any oral or written communication with him or her except in the regular course of proceedings.

(b) Any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings.

(c) Any threat, intimidation, persuasion, or entreaty.

(d) Any promise, or assurance of any pecuniary or other advantage.

SEC. 241. Section 95.1 of the Penal Code is amended to read:

95.1. Every person who threatens a juror with respect to a criminal proceeding in which a verdict has been rendered and who has the intent and apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

SEC. 242. Section 96 of the Penal Code is amended to read:

96. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

One—Makes any promise or agreement to give a verdict or decision for or against any party; or,

Two—Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or

information relating to any cause or matter pending before him, except according to the regular course of proceedings,

is punishable by fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 243. Section 99 of the Penal Code is amended to read:

99. The Superintendent of State Printing shall not, during his continuance in office, have any interest, either directly or indirectly, in any contract in any way connected with his office as Superintendent of State Printing; nor shall he, during said period, be interested, either directly or indirectly, in any state printing, binding, engraving, lithographing, or other state work of any kind connected with his said office; nor shall he, directly or indirectly, be interested in any contract for furnishing paper, or other printing stock or material, to or for use in his said office; and any violations of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* and to a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 244. Section 107 of the Penal Code is amended to read:

107. Every prisoner charged with or convicted of a felony who is an inmate of any public training school or reformatory or county hospital who escapes or attempts to escape from such public training school or reformatory or county hospital is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 245. Section 109 of the Penal Code is amended to read:

109. Any person who willfully assists any inmate of any public training school or reformatory to escape, or in an attempt to escape from ~~such~~ *that* public training school or reformatory is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, and fine not exceeding ten thousand dollars ($10,000).

SEC. 246. Section 113 of the Penal Code is amended to read:

113. Any person who manufactures, distributes or sells false documents to conceal the true citizenship or resident alien status of another person is guilty of a felony, and shall be punished by

imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five years or by a fine of seventy-five thousand dollars ($75,000).

SEC. 247. Section 114 of the Penal Code is amended to read:

114. Any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five years or by a fine of twenty-five thousand dollars ($25,000).

SEC. 248. Section 115.1 of the Penal Code is amended to read:

115.1. (a) The Legislature finds and declares that the voters of California are entitled to accurate representations in materials that are directed to them in efforts to influence how they vote.

(b) No person shall publish or cause to be published, with intent to deceive, any campaign advertisement containing a signature that the person knows to be unauthorized.

(c) For purposes of this section, "campaign advertisement" means any communication directed to voters by means of a mass mailing as defined in Section 82041.5 of the Government Code, a paid television, radio, or newspaper advertisement, an outdoor advertisement, or any other printed matter, if the expenditures for that communication are required to be reported by Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(d) For purposes of this section, an authorization to use a signature shall be oral or written.

(e) Nothing in this section shall be construed to prohibit a person from publishing or causing to be published a reproduction of all or part of a document containing an actual or authorized signature, provided that the signature so reproduced shall not, with the intent to deceive, be incorporated into another document in a manner that falsely suggests that the person whose signature is reproduced has signed the other document.

(f) Any knowing or willful violation of this section is a public offense punishable by imprisonment ~~in the state prison or~~ in a county jail *not exceeding 6 months, or pursuant to subdivision (h) of Section 1170,* or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(g) As used in this section, "signature" means either of the following:

(1) A handwritten or mechanical signature, or a copy thereof.

(2) Any representation of a person's name, including, but not limited to, a printed or typewritten representation, that serves the same purpose as a handwritten or mechanical signature.

SEC. 249. Section 126 of the Penal Code is amended to read:

126. Perjury is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 250. Section 136.7 of the Penal Code is amended to read:

136.7. Every person imprisoned in a county jail or the state prison who has been convicted of a sexual offense, including, but not limited to, a violation of Section 243.4, 261, 261.5, 262, 264.1, 266, 266a, 266b, 266c, 266f, 285, 286, 288, 288a, or 289, who knowingly reveals the name and address of any witness or victim to that offense to any other prisoner with the intent that the other prisoner will intimidate or harass the witness or victim through the initiation of unauthorized correspondence with the witness or victim, is guilty of a public offense, punishable by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

Nothing in this section shall prevent the interviewing of witnesses.

SEC. 251. Section 137 of the Penal Code is amended to read:

137. (a) Every person who gives or offers, or promises to give, to any witness, person about to be called as a witness, or person about to give material information pertaining to a crime to a law enforcement official, any bribe, upon any understanding or agreement that the testimony of such witness or information given by such person shall be thereby influenced is guilty of a felony.

(b) Every person who attempts by force or threat of force or by the use of fraud to induce any person to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or withhold true material information pertaining to a crime from, a law enforcement official is guilty of a felony, punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

As used in this subdivision, "threat of force" means a credible threat of unlawful injury to any person or damage to the property of another which is communicated to a person for the purpose of inducing him to give false testimony or withhold true testimony

or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official.

(c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official is guilty of a misdemeanor.

(d) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this section and shall announce the penalties and other provisions of this section.

(e) As used in this section "law enforcement official" includes any district attorney, deputy district attorney, city attorney, deputy city attorney, the Attorney General or any deputy attorney general, or any peace officer included in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) The provisions of subdivision (c) shall not apply to an attorney advising a client or to a person advising a member of his or her family.

SEC. 252. Section 139 of the Penal Code, as amended by Section 1 of Chapter 80 of the Statutes of 1990, is amended to read:

139. (a) Except as provided in Sections 71 and 136.1, any person who has been convicted of any felony offense specified in Section 12021.1 who willfully and maliciously communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(b) Any person who is convicted of violating subdivision (a) who subsequently is convicted of making a credible threat, as defined in subdivision (c), which constitutes a threat against the life of, or a threat to cause great bodily injury to, a person described in subdivision (a), shall be sentenced to consecutive terms of imprisonment as prescribed in Section 1170.13.

(c) As used in this section, "a credible threat" is a threat made with the intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) The present incarceration of the person making the threat shall not be a bar to prosecution under this section.

(e) As used in this section, "malice," "witness," and "victim" have the meanings given in Section 136.

SEC. 253. Section 139 of the Penal Code, as amended by Section 43 of Chapter 178 of the Statutes of 2010, is amended to read:

139. (a) Except as provided in Sections 71 and 136.1, any person who has been convicted of any felony offense specified in Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 who willfully and maliciously communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(b) Any person who is convicted of violating subdivision (a) who subsequently is convicted of making a credible threat, as defined in subdivision (c), which constitutes a threat against the life of, or a threat to cause great bodily injury to, a person described in subdivision (a), shall be sentenced to consecutive terms of imprisonment as prescribed in Section 1170.13.

(c) As used in this section, "a credible threat" is a threat made with the intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) The present incarceration of the person making the threat shall not be a bar to prosecution under this section.

(e) As used in this section, "malice," "witness," and "victim" have the meanings given in Section 136.

SEC. 254. Section 140 of the Penal Code is amended to read:

140. (a) Except as provided in Section 139, every person who willfully uses force or threatens to use force or violence upon the person of a witness to, or a victim of, a crime or any other person, or to take, damage, or destroy any property of any witness, victim,

or any other person, because the witness, victim, or other person has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(b) A person who is punished under another provision of law for an act described in subdivision (a) shall not receive an additional term of imprisonment under this section.

SEC. 255. Section 142 of the Penal Code is amended to read:

142. (a) Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, *or pursuant to subdivision (h) of Section 1170,* or by both that fine and imprisonment.

(b) Notwithstanding subdivision (a), the sheriff may determine whether any jail, institution, or facility under his or her direction shall be designated as a reception, holding, or confinement facility, or shall be used for several of those purposes, and may designate the class of prisoners for which any facility shall be used.

(c) This section shall not apply to arrests made pursuant to Section 837.

SEC. 256. Section 146a of the Penal Code is amended to read:

146a. (a) Any person who falsely represents himself or herself to be a deputy or clerk in any state department and who, in that assumed character, does any of the following is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars ($2,500), or both the fine and imprisonment:

(1) Arrests, detains, or threatens to arrest or detain any person.

(2) Otherwise intimidates any person.

(3) Searches any person, building, or other property of any person.

(4) Obtains money, property, or other thing of value.

(b) Any person who falsely represents himself or herself to be a public officer, investigator, or inspector in any state department and who, in that assumed character, does any of the following shall

be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*:

(1) Arrests, detains, or threatens to arrest or detain any person.

(2) Otherwise intimidates any person.

(3) Searches any person, building, or other property of any person.

(4) Obtains money, property, or other thing of value.

SEC. 257. Section 146e of the Penal Code is amended to read:

146e. (a) Every person who maliciously, and with the intent to obstruct justice or the due administration of the laws, or with the intent or threat to inflict imminent physical harm in retaliation for the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any peace officer, nonsworn police dispatcher, employee of a city police department or county sheriff's office, or public safety official, or that of the spouse or children of these persons who reside with them, while designating the peace officer, nonsworn police dispatcher, employee of a city police department or county sheriff's office, or public safety official, or relative of these persons as such, without the authorization of the employing agency, is guilty of a misdemeanor.

(b) A violation of subdivision (a) with regard to any peace officer, employee of a city police department or county sheriff's office, or public safety official, or the spouse or children of these persons, that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or public safety official, or the spouse or children of these persons, is a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(c) For purposes of this section, "public safety official" is defined in Section 6254.24 of the Government Code.

SEC. 258. Section 148 of the Penal Code is amended to read:

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when

no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

SEC. 259. Section 148.1 of the Penal Code is amended to read:

148.1. (a) Any person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, deputy district attorney, employees of the Department of Justice, employees of an airline, employees of an airport, employees of a railroad or busline, an employee of a telephone company, occupants of a building or a news reporter in the employ of a newspaper or radio or television station, that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in ~~the state prison, or imprisonment in the~~ *a* county jail not to exceed one year*, or pursuant to subdivision (h) of Section 1170*.

(b) Any person who reports to any other peace officer defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 that a bomb or other explosive has been or will be placed or

secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in ~~the state prison or in the~~ *a* county jail not to exceed one year *or pursuant to subdivision (h) of Section 1170* if (1) the false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

(c) Any person who maliciously informs any other person that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the information is false, is guilty of a crime punishable by imprisonment in ~~the state prison, or imprisonment in the~~ *a* county jail not to exceed one year*, or pursuant to subdivision (h) of Section 1170*.

(d) Any person who maliciously gives, mails, sends, or causes to be sent any false or facsimile bomb to another person, or places, causes to be placed, or maliciously possesses any false or facsimile bomb, with the intent to cause another to fear for his or her personal safety or the safety of others, is guilty of a crime punishable by imprisonment in ~~the state prison, or imprisonment in the~~ *a* county jail not to exceed one year*, or pursuant to subdivision (h) of Section 1170*.

SEC. 260. Section 148.3 of the Penal Code is amended to read:

148.3. (a) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, knowing that the report is false, is guilty of a misdemeanor and upon conviction thereof shall be punishable by imprisonment in ~~the~~ *a* county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, and who knows that the report is false, and who knows or should know that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death is sustained by any person as a result of the false report, is guilty of a felony and upon conviction thereof shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or

by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(c) "Emergency" as used in this section means any condition that results in, or could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, any condition that jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter, or any situation that results in or could result in activation of the Emergency Alert System pursuant to Section 8594 of the Government Code. An activation or possible activation of the Emergency Alert System pursuant to Section 8594 of the Government Code shall not constitute an "emergency" for purposes of this section if it occurs as the result of a report made or caused to be made by a parent, guardian, or lawful custodian of a child that is based on a good faith belief that the child is missing.

SEC. 261. Section 148.4 of the Penal Code is amended to read:

148.4. (a) Any person who does any of the following is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail, not exceeding one year, or by a fine, not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment:

(1) Willfully and maliciously tampers with, molests, injures, or breaks any fire protection equipment, fire protection installation, fire alarm apparatus, wire, or signal.

(2) Willfully and maliciously sends, gives, transmits, or sounds any false alarm of fire, by means of any fire alarm system or signal or by any other means or methods.

(b) Any person who willfully and maliciously sends, gives, transmits, or sounds any false alarm of fire, by means of any fire alarm system or signal, or by any other means or methods, is guilty of a felony and upon conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by both that fine and imprisonment, if any person sustains as a result thereof, any of the following:

(1) Great bodily injury.

(2) Death.

SEC. 262. Section 148.10 of the Penal Code is amended to read:

148.10. (a) Every person who willfully resists a peace officer in the discharge or attempt to discharge any duty of his or her office or employment and whose willful resistance proximately causes death or serious bodily injury to a peace officer shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or by both that fine and imprisonment, or by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) For purposes of subdivision (a), the following facts shall be found by the trier of fact:

(1) That the peace officer's action was reasonable based on the facts or circumstances confronting the officer at the time.

(2) That the detention and arrest was lawful and there existed probable cause or reasonable cause to detain.

(3) That the person who willfully resisted any peace officer knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.

(c) This section does not apply to conduct that occurs during labor picketing, demonstrations, or disturbing the peace.

(d) For purposes of this section, "serious bodily injury" is defined in paragraph (4) of subdivision (f) of Section 243.

SEC. 263. Section 149 of the Penal Code is amended to read:

149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or *pursuant to subdivision (h) of Section 1170, or* by both ~~such~~ *that* fine and imprisonment.

SEC. 264. Section 153 of the Penal Code is amended to read:

153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal ~~such~~ *that* crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for

by law, in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, *or pursuant to subdivision (h) of Section 1170,* where the crime was punishable by death or imprisonment in the state prison for life;

2. By imprisonment in ~~the state prison, or in the~~ *a* county jail not exceeding six months, *or pursuant to subdivision (h) of Section 1170,* where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in ~~the~~ *a* county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), where the crime was a misdemeanor.

SEC. 265. Section 156 of the Penal Code is amended to read:

156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 266. Section 157 of the Penal Code is amended to read:

157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of ~~such~~ *that* child, substitutes or produces to ~~such~~ *that* parent or guardian another child in the place of the one so confided, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 267. Section 168 of the Penal Code is amended to read:

168. (a) Every district attorney, clerk, judge, or peace officer who, except by issuing or in executing a search warrant or warrant of arrest for a felony, willfully discloses the fact of the warrant prior to execution for the purpose of preventing the search or seizure of property or the arrest of any person shall be punished by imprisonment in ~~the state prison or in~~ a county jail for not exceeding one year *or pursuant to subdivision (h) of Section 1170*.

(b) This section shall not prohibit the following:

(1) A disclosure made by a district attorney or the Attorney General for the sole purpose of securing voluntary compliance with the warrant.

(2) Upon the return of an indictment and the issuance of an arrest warrant, a disclosure of the existence of the indictment and arrest warrant by a district attorney or the Attorney General to assist in the apprehension of a defendant.

(3) The disclosure of an arrest warrant pursuant to paragraph (1) of subdivision (a) of Section 14201.6.

SEC. 268. Section 171c of the Penal Code is amended to read:

171c. (a) (1) Any person who brings a loaded firearm into, or possesses a loaded firearm within, the State Capitol, any legislative office, any office of the Governor or other constitutional officer, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing, or upon the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of Sacramento, shall be punished by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Any person who brings or possesses, within the State Capitol, any legislative office, any hearing room in which any committee of the Senate or Assembly is conducting a hearing, the Legislative Office Building at 1020 N Street in the City of Sacramento, or upon the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of Sacramento, any of the following, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the area is posted with a statement providing reasonable notice that prosecution may result from possession of any of these items:

(A) Any firearm.

(B) Any deadly weapon described in Section 653k or 12020.

(C) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(D) Any unauthorized tear gas weapon.

(E) Any stun gun, as defined in Section 244.5.

(F) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

(G) Any ammunition as defined in Section 12316.

(H) Any explosive as defined in Section 12000 of the Health and Safety Code.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, and who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed weapon upon the premises described in subdivision (a).

(3) A person who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon upon the premises described in subdivision (a).

(c) (1) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 269. Section 171d of the Penal Code, as amended by Section 497 of Chapter 538 of the Statutes of 2006, is amended to read:

171d. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the

federal government who is carrying out official duties while in California, any person summoned by that officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, the Governor or a member of his or her immediate family or a person acting with his or her permission with respect to the Governor's Mansion or any other residence of the Governor, any other constitutional officer or a member of his or her immediate family or a person acting with his or her permission with respect to the officer's residence, or a Member of the Legislature or a member of his or her immediate family or a person acting with his or her permission with respect to the Member's residence, shall be punished by imprisonment in a county jail for not more than one year, by fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, if he or she does any of the following:

(a) Brings a loaded firearm into, or possesses a loaded firearm within, the Governor's Mansion, or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

(b) Brings a loaded firearm upon, or possesses a loaded firearm upon, the grounds of the Governor's Mansion or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

SEC. 270. Section 171d of the Penal Code, as amended by Section 47 of Chapter 178 of the Statutes of 2010, is amended to read:

171d. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by that officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant

to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, the Governor or a member of his or her immediate family or a person acting with his or her permission with respect to the Governor's Mansion or any other residence of the Governor, any other constitutional officer or a member of his or her immediate family or a person acting with his or her permission with respect to the officer's residence, or a Member of the Legislature or a member of his or her immediate family or a person acting with his or her permission with respect to the Member's residence, shall be punished by imprisonment in a county jail for not more than one year, by fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, if he or she does any of the following:

(a) Brings a loaded firearm into, or possesses a loaded firearm within, the Governor's Mansion, or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

(b) Brings a loaded firearm upon, or possesses a loaded firearm upon, the grounds of the Governor's Mansion or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

SEC. 271. Section 181 of the Penal Code is amended to read:

181. Every person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his *or her* custody, or under his *or her* power or control, or who knowingly aids or assists in any manner any one thus offending, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 272. Section 182 of the Penal Code is amended to read:

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in ~~the state prison, or by imprisonment in the~~ *a* county jail for not more than one year, *or by imprisonment pursuant to subdivision (h) of Section 1170,* or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in ~~the~~ *a* county

jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. When they receive a felony conviction for conspiring to commit identity theft, as defined in Section 530.5, the court may impose a fine of up to twenty-five thousand dollars ($25,000).

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 273. Section 186.10 of the Penal Code is amended to read:

186.10. (a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars ($5,000), or a total value exceeding twenty-five thousand dollars ($25,000) within a 30-day period, through one or more financial institutions (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. The aggregation periods do not create an obligation for financial institutions to record, report, create, or implement tracking systems or otherwise monitor transactions involving monetary instruments in any time period. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in a county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, by a fine of not more than two hundred fifty thousand dollars ($250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars ($500,000) or five times the value of the property transacted, whichever is greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars ($5,000), each series of transactions conducted within a seven-day period that total in excess of five thousand dollars ($5,000), or each series of transactions conducted within a 30-day period that total in excess of twenty-five thousand dollars ($25,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* shall also be subject to an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars ($50,000) but is less than one hundred fifty thousand dollars ($150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars ($150,000) but is less than one million dollars ($1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars ($1,000,000), but is less than two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

SEC. 275. Section 186.22 of the Penal Code, as amended by Section 1 of Chapter 256 of the Statutes of 2010, is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term *pursuant to subdivision (h) of Section 1170* of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years *in the state prison*.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years *in the state prison*.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of the sentencing in accordance with the provisions of subdivision (d) of Section 1170.1.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years, provided that any person sentenced to imprisonment in the county jail *not to exceed one year* shall be imprisoned for a period ~~not to exceed one year, but~~ *of* not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Money laundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(26) Felony theft of an access card or account information, as defined in Section 484e.

(27) Counterfeiting, designing, using, or attempting to use an access card, as defined in Section 484f.

(28) Felony fraudulent use of an access card or account information, as defined in Section 484g.

(29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in Section 530.5.

(30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in Section 529.7.

(31) Prohibited possession of a firearm in violation of Section 12021.

(32) Carrying a concealed firearm in violation of Section 12025.

(33) Carrying a loaded firearm in violation of Section 12031.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Division of Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

(k) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 276. Section 186.22 of the Penal Code, as amended by Section 2 of Chapter 256 of the Statutes of 2010, is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term *pursuant to subdivision*

(h) of Section 1170 of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years *in the state prison*.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years *in the state prison*.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years, provided that any person sentenced to imprisonment in the county jail *not exceeding one year* shall be imprisoned for a period ~~not to exceed one year, but~~ *of* not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Money laundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(26) Felony theft of an access card or account information, as defined in Section 484e.

(27) Counterfeiting, designing, using, or attempting to use an access card, as defined in Section 484f.

(28) Felony fraudulent use of an access card or account information, as defined in Section 484g.

(29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in Section 530.5.

(30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in Section 529.7.

(31) Prohibited possession of a firearm in violation of Section 12021.

(32) Carrying a concealed firearm in violation of Section 12025.

(33) Carrying a loaded firearm in violation of Section 12031.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Division of Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

(k) This section shall become operative on January 1, 2012.

SEC. 277. Section 186.26 of the Penal Code is amended to read:

186.26. (a) Any person who solicits or recruits another to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, with the intent that the person solicited or recruited participate in a pattern of criminal street gang activity, as defined in subdivision (e) of Section 186.22, or with the intent that the person solicited or recruited promote, further, or assist in any felonious conduct by members of the criminal street gang, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(b) Any person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(c) Any person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, or to prevent the person from leaving a criminal street gang, shall be

punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, four, or five years.

(d) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor, an additional term *pursuant to subdivision (h) of Section 1170* of three years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

(e) Nothing in this section shall be construed to limit prosecution under any other provision of law.

SEC. 278. Section 186.28 of the Penal Code is amended to read:

186.28. (a) Any person, corporation, or firm who shall knowingly supply, sell, or give possession or control of any firearm to another shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment if all of the following apply:

(1) The person, corporation, or firm has actual knowledge that the person will use the firearm to commit a felony described in subdivision (e) of Section 186.22, while actively participating in any criminal street gang, as defined in subdivision (f) of Section 186.22, the members of which engage in a pattern of criminal activity, as defined in subdivision (e) of Section 186.22.

(2) The firearm is used to commit the felony.

(3) A conviction for the felony violation under subdivision (e) of Section 186.22 has first been obtained of the person to whom the firearm was supplied, sold, or given possession or control pursuant to this section.

(b) This section shall only be applicable where the person is not convicted as a principal to the felony offense committed by the person to whom the firearm was supplied, sold, or given possession or control pursuant to this section.

SEC. 279. Section 186.33 of the Penal Code, as amended by Section 3 of Chapter 256 of the Statutes of 2010, is amended to read:

186.33. (a) Any person required to register pursuant to Section 186.30 who knowingly violates any of its provisions is guilty of a misdemeanor.

(b) (1) Any person who knowingly fails to register pursuant to Section 186.30 and is subsequently convicted of, or any person for whom a petition is subsequently sustained for a violation of, any of the offenses specified in Section 186.30, shall be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two, or three years. The court shall select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of sentencing in accordance with the provisions of subdivision (d) of Section 1170.1.

(2) The existence of any fact bringing a person under this subdivision shall be alleged in the information, indictment, or petition, and be either admitted by the defendant or minor in open court, or found to be true or not true by the trier of fact.

(c) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 280. Section 186.33 of the Penal Code, as amended by Section 4 of Chapter 256 of the Statutes of 2010, is amended to read:

186.33. (a) Any person required to register pursuant to Section 186.30 who knowingly violates any of its provisions is guilty of a misdemeanor.

(b) (1) Any person who knowingly fails to register pursuant to Section 186.30 and is subsequently convicted of, or any person for whom a petition is subsequently sustained for a violation of, any of the offenses specified in Section 186.30, shall be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two, or three years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for the enhancement choice on the record at the time of sentencing.

(2) The existence of any fact bringing a person under this subdivision shall be alleged in the information, indictment, or petition, and be either admitted by the defendant or minor in open court, or found to be true or not true by the trier of fact.

(c) This section shall become operative on January 1, 2012.

SEC. 281. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(b) Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

(c) (1) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated in violation of subdivision (a) is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(2) Vehicular manslaughter while intoxicated in violation of subdivision (b) is punishable by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or 4 years.

(d) A person convicted of violating subdivision (a) who has one or more prior convictions of this section or of paragraph (1) of subdivision (c) of Section 192, subdivision (a) or (b) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice

consistent with the holding of the California Supreme Court in People v. Watson, 30 Cal. 3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 282. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for 3, 6, or 11 years.

(b) Involuntary manslaughter is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) A violation of paragraph (1) of subdivision (c) of Section 192 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four, or six years.

(2) A violation of paragraph (2) of subdivision (c) of Section 192 is punishable by imprisonment in the county jail for not more than one year.

(3) A violation of paragraph (3) of subdivision (c) of Section 192 is punishable by imprisonment in the state prison for 4, 6, or 10 years.

SEC. 283. Section 193.5 of the Penal Code is amended to read:

193.5. Manslaughter committed during the operation of a vessel is punishable as follows:

(a) A violation of subdivision (a) of Section 192.5 is punishable by imprisonment in the state prison for 4, 6, or ten years.

(b) A violation of subdivision (b) of Section 192.5 is punishable by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or 4 years.

(c) A violation of subdivision (c) of Section 192.5 is punishable either by imprisonment in the county jail for not more than one

year or by imprisonment in the state prison for two, four, or six years.

(d) A violation of subdivision (d) of Section 192.5 is punishable by imprisonment in the county jail for not more than one year.

SEC. 284. Section 210.5 of the Penal Code is amended to read:

210.5. Every person who commits the offense of false imprisonment, as defined in Section 236, against a person for purposes of protection from arrest, which substantially increases the risk of harm to the victim, or for purposes of using the person as a shield is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, five, or eight years.

SEC. 285. Section 217.1 of the Penal Code is amended to read:

217.1. (a) Except as provided in subdivision (b), every person who commits any assault upon the President or Vice President of the United States, the Governor of any state or territory, any justice, judge, or former judge of any local, state, or federal court of record, any commissioner, referee, or other subordinate judicial officer of any court of record, the secretary or director of any executive agency or department of the United States or any state or territory, or any other official of the United States or any state or territory holding elective office, any mayor, city council member, county supervisor, sheriff, district attorney, prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, public defender or assistant public defender of any local, state, or federal public defender's office, a former public defender or assistant public defender of any local, state, or federal public defender's office, the chief of police of any municipal police department, any peace officer, any juror in any local, state, or federal court of record, or the immediate family of any of these officials, in retaliation for or to prevent the performance of the victim's official duties, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) Notwithstanding subdivision (a), every person who attempts to commit murder against any person listed in subdivision (a) in retaliation for or to prevent the performance of the victim's official duties, shall be confined in the state prison for a term of 15 years

to life. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15 years in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to ~~such~~ *that* time.

(c) For the purposes of this section, the following words have the following meanings:

(1) "Immediate family" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) "Peace officer" means any person specified in subdivision (a) of Section 830.1 or Section 830.5.

SEC. 286. Section 218.1 of the Penal Code is amended to read:

218.1. Any person who unlawfully and with gross negligence places or causes to be placed any obstruction upon or near the track of any railroad that proximately results in either the damaging or derailing of any passenger, freight, or other train, or injures a rail passenger or employee, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or by imprisonment in a county jail for not more than one year, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

SEC. 287. Section 219.1 of the Penal Code is amended to read:

219.1. Every person who unlawfully throws, hurls or projects at a vehicle operated by a common carrier, while such vehicle is either in motion or stationary, any rock, stone, brick, bottle, piece of wood or metal or any other missile of any kind or character, or does any unlawful act, with the intention of wrecking such vehicle and doing bodily harm, and thus wrecks the same and causes bodily harm, is guilty of a felony and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, four, or six years.

SEC. 287.5. Section 222 of the Penal Code is amended to read:

222. Every person guilty of administering to another any chloroform, ether, laudanum, or any controlled substance, anaesthetic, or intoxicating agent, with intent thereby to enable or assist himself or herself or any other person to commit a felony, is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or two or three years*.

SEC. 288. Section 237 of the Penal Code is amended to read:

237. (a) False imprisonment is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) False imprisonment of an elder or dependent adult by use of violence, menace, fraud, or deceit shall be punishable as described in subdivision (f) of Section 368.

SEC. 289. Section 241.1 of the Penal Code is amended to read:

241.1. When an assault is committed against the person of a custodial officer as defined in Section 831 or 831.5, and the person committing the offense knows or reasonably should know that ~~such~~ *the* victim is ~~such~~ a custodial officer engaged in the performance of his *or her* duties, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 290. Section 241.4 of the Penal Code is amended to read:

241.4. An assault is punishable by fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both. When the assault is committed against the person of a peace officer engaged in the performance of his or her duties as a member of a police department of a school district pursuant to Section 38000 of the Education Code, and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 291. Section 241.7 of the Penal Code is amended to read:

241.7. Any person who is a party to a civil or criminal action in which a jury has been selected to try the case and who, while the legal action is pending or after the conclusion of the trial, commits an assault against any juror or alternate juror who was selected and sworn in that legal action, shall be punished by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and

imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 292. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance

of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city,

a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) "Code enforcement officer" means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements,

and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Mobilehomes-Manufactured Housing Act (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 293. Section 243.1 of the Penal Code is amended to read:

243.1. When a battery is committed against the person of a custodial officer as defined in Section 831 of the Penal Code, and the person committing the offense knows or reasonably should know that the victim is a custodial officer engaged in the performance of his or her duties, and the custodial officer is engaged in the performance of his or her duties, the offense shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 294. Section 243.6 of the Penal Code is amended to read:

243.6. When a battery is committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the

person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both the fine and imprisonment. However, if an injury is inflicted on the victim, the battery shall be punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than two thousand dollars ($2,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

For purposes of this section, "school employee" has the same meaning as defined in subdivision (d) of Section 245.5.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 296. Section 244.5 of the Penal Code, as amended by Section 1 of Chapter 556 of the Statutes of 2008, is amended to read:

244.5. (a) As used in this section, "stun gun" means any item, except a less lethal weapon, as defined in Section 12601, used or intended to be used as either an offensive or defensive weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge.

(b) Every person who commits an assault upon the person of another with a stun gun or less lethal weapon, as defined in Section 12601, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two, or three years.

(c) Every person who commits an assault upon the person of a peace officer or firefighter with a stun gun or less lethal weapon, as defined in Section 12601, who knows or reasonably should know that the person is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(d) This section shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

SEC. 297. Section 244.5 of the Penal Code, as amended by Section 52 of Chapter 178 of the Statutes of 2010, is amended to read:

244.5. (a) As used in this section, "stun gun" means any item, except a less lethal weapon, as defined in Section 16780, used or intended to be used as either an offensive or defensive weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge.

(b) Every person who commits an assault upon the person of another with a stun gun or less lethal weapon, as defined in Section 16780, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two, or three years.

(c) Every person who commits an assault upon the person of a peace officer or firefighter with a stun gun or less lethal weapon, as defined in Section 16780, who knows or reasonably should know that the person is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(d) This section shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

SEC. 298. Section 245 of the Penal Code, as amended by Section 53 of Chapter 178 of the Statutes of 2010, is amended to read:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not

less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 16880, or an assault weapon, as defined in Section 30510 or 30515, or a .50 BMG rifle, as defined in Section 30530, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 16880, or an assault weapon, as defined in Section 30510 or 30515, or a .50 BMG rifle, as defined in Section 30530, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Sections 18000 and 18005.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 299. Section 245.6 of the Penal Code is amended to read:

245.6. (a) It shall be unlawful to engage in hazing, as defined in this section.

(b) "Hazing" means any method of initiation or preinitiation into a student organization or student body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury to any former, current, or prospective student of any school, community college, college, university, or other educational institution in this state. The term "hazing" does not include customary athletic events or school-sanctioned events.

(c) A violation of this section that does not result in serious bodily injury is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100), nor more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than one year, or both.

(d) Any person who personally engages in hazing that results in death or serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code, is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(e) The person against whom the hazing is directed may commence a civil action for injury or damages. The action may be brought against any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.

(f) Prosecution under this section shall not prohibit prosecution under any other provision of law.

SEC. 300. Section 246.3 of the Penal Code is amended to read:

246.3. (a) Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) Except as otherwise authorized by law, any person who willfully discharges a BB device in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year.

(c) As used in this section, "BB device" means any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.

SEC. 301. Section 247.5 of the Penal Code is amended to read:

247.5. Any person who willfully and maliciously discharges a laser at an aircraft, whether in motion or in flight, while occupied, is guilty of a violation of this section, which shall be punishable as either a misdemeanor by imprisonment in the county jail for not more than one year or by a fine of one thousand dollars ($1,000), or a felony by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two years, or three years, or by a fine of two thousand dollars ($2,000). This section does not apply to the conduct of laser development activity by or on behalf of the United States Armed Forces.

As used in this section, "aircraft" means any contrivance intended for and capable of transporting persons through the airspace.

As used in this section, "laser" means a device that utilizes the natural oscillations of atoms or molecules between energy levels for generating coherent electromagnetic radiation in the ultraviolet, visible, or infrared region of the spectrum, and when discharged exceeds one milliwatt continuous wave.

SEC. 302. Section 261.5 of the Penal Code is amended to read:

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older

or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in

the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 303. Section 265 of the Penal Code is amended to read:

265. Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 304. Section 266b of the Penal Code is amended to read:

266b. Every person who takes any other person unlawfully, and against his or her will, and by force, menace, or duress, compels him or her to live with such person in an illicit relation, against his or her consent, or to so live with any other person, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 304.5. Section 266e of the Penal Code is amended to read:

266e. Every person who purchases, or pays any money or other valuable thing for, any person for the purpose of prostitution as defined in subdivision (b) of Section 647, or for the purpose of placing such person, for immoral purposes, in any house or place against his or her will, is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

SEC. 304.7. Section 266f of the Penal Code is amended to read:

266f. Every person who sells any person or receives any money or other valuable thing for or on account of his or her placing in custody, for immoral purposes, any person, whether with or without his or her consent, is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

SEC. 305. Section 266g of the Penal Code is amended to read:

266g. Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years; and in all prosecutions under this section a wife is a competent witness against her husband.

SEC. 306. Section 271 of the Penal Code is amended to read:

271. Every parent of any child under the age of 14 years, and every person to whom any such child has been confided for nurture, or education, who deserts such child in any place whatever with intent to abandon it, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in the county jail not exceeding one year or by fine not exceeding one thousand dollars ($1,000) or by both.

SEC. 307. Section 271a of the Penal Code is amended to read:

271a. Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of 14 years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into ~~such~~ *that* asylum or institution application has been made is an orphan, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars ($1,000), or by both.

SEC. 308. Section 273.4 of the Penal Code is amended to read:

273.4. (a) If the act constituting a felony violation of subdivision (a) of Section 273a was female genital mutilation, as defined in subdivision (b), the defendant shall be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year, in addition and consecutive to the punishment prescribed by Section 273a.

(b) "Female genital mutilation" means the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.

(c) Nothing in this section shall preclude prosecution under Section 203, 205, or 206 or any other provision of law.

SEC. 309. Section 273.6 of the Penal Code, as amended by Section 2 of Chapter 566 of the Statutes of 2009, is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of

Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 310. Section 273.6 of the Penal Code, as amended by Section 55 of Chapter 178 of the Statutes of 2010, is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six

months nor more than one year, by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under Section 29825.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 311. Section 273.65 of the Penal Code is amended to read:

273.65. (a) Any intentional and knowing violation of a protective order issued pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future

violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) which results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court ordered child support.

SEC. 312. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both ~~prison custody and~~ the commission of an offense that results in a felony conviction *and prison custody or custody for more than one year in a county jail*.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 313. Section 278 of the Penal Code is amended to read:

278. Every person, not having a right to custody, who maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

SEC. 314. Section 278.5 of the Penal Code is amended to read:

278.5. (a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court's contempt power.

(c) A custody order obtained after the taking, enticing away, keeping, withholding, or concealing of a child does not constitute a defense to a crime charged under this section.

SEC. 315. Section 280 of the Penal Code is amended to read:

280. Every person who willfully causes or permits the removal or concealment of any child in violation of Section 8713, 8803, or 8910 of the Family Code shall be punished as follows:

(a) By imprisonment in a county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for adoption, or is removed from that county to a place within this state.

(b) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail for not more than one year, if the child is removed from that county to a place outside of this state.

SEC. 316. Section 284 of the Penal Code is amended to read:

284. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars ($5,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 317. Section 288.2 of the Penal Code is amended to read:

288.2. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages,

any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.

(b) Every person who, with knowledge that a person is a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by electronic mail, the Internet, as defined in Section 17538 of the Business and Professions Code, or a commercial online service, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(c) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.

(d) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(e) It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this section or perform related activities in providing telephone, cable television, Internet, or commercial online services.

SEC. 318. Section 290.018 of the Penal Code is amended to read:

290.018. (a) Any person who is required to register under the Act based on a misdemeanor conviction or juvenile adjudication

who willfully violates any requirement of the Act is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(b) Except as provided in subdivisions (f), (h), and (j), any person who is required to register under the Act based on a felony conviction or juvenile adjudication who willfully violates any requirement of the Act or who has a prior conviction or juvenile adjudication for the offense of failing to register under the Act and who subsequently and willfully violates any requirement of the Act is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(c) If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in subdivision (b) or this subdivision shall apply whether or not the person has been released on parole or has been discharged from parole.

(d) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under the Act, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required pursuant to Section 290.008, but who has been found not guilty by reason of insanity, who willfully violates any requirement of the Act is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of the Act, the person is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(e) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this act, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this section. A person convicted of a felony as specified in this section may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this act, the court shall specify on the record and shall enter into the

minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(f) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subdivision (b) of Section 290.012, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail not exceeding one year.

(g) Except as otherwise provided in subdivision (f), any person who is required to register or reregister pursuant to Section 290.011 and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of Section 290.011 that he or she reregister no less than every 30 days shall be punished in accordance with either subdivision (a) or (b).

(h) Any person who fails to provide proof of residence as required by paragraph (5) of subdivision (a) of Section 290.015, regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(i) Any person who is required to register under the Act who willfully violates any requirement of the Act is guilty of a continuing offense as to each requirement he or she violated.

(j) In addition to any other penalty imposed under this section, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year. Nothing in this subdivision shall be construed to limit or prevent prosecution under any applicable provision of law.

(k) Whenever any person is released on parole or probation and is required to register under the Act but fails to do so within the time prescribed, the parole authority or the court, as the case may

be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

SEC. 319. Section 290.4 of the Penal Code is amended to read:

290.4. (a) The department shall operate a service through which members of the public may provide a list of at least six persons on a form approved by the Department of Justice and inquire whether any of those persons is required to register as a sex offender and is subject to public notification. The Department of Justice shall respond with information on any person as to whom information may be available to the public via the Internet Web site as provided in Section 290.46, to the extent that information may be disclosed pursuant to Section 290.46. The Department of Justice may establish a fee for requests, including all actual and reasonable costs associated with the service.

(b) The income from the operation of the service specified in subdivision (a) shall be deposited in the Sexual Predator Public Information Account within the Department of Justice for the purpose of the implementation of this section by the Department of Justice.

The moneys in the account shall consist of income from the operation of the service authorized by subdivision (a), and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subdivision (a).

(c) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(d) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant

to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the service specified in subdivision (a), in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of the service is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(e) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.

(f) The public notification provisions of this section are applicable to every person described in subdivision (a), without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense subject to public notification pursuant to Section 290.46, regardless of when it was committed.

SEC. 320. Section 290.45 of the Penal Code is amended to read:

290.45. (a) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person's arrest.

(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender's name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of

further disclosure. A law enforcement entity may not authorize any disclosure of this information by its placement on an Internet Web site.

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) For purposes of this section, "designated law enforcement entity" means the Department of Justice, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in Section 290, regardless of when it was committed.

SEC. 321. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the

offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of Mental Health shall provide to the Department of Justice Sex Offender Tracking Program the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before January 1, 2013, the department shall make available to the public via the Internet Web site his or her static SARATSO score and

information on an elevated risk level based on the SARATSO future violence tool.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.

(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal

history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.
(D) Section 266j.
(E) Section 267.
(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.
(G) Section 288.3, provided that the offense is a misdemeanor.
(H) Section 288.4, provided that the offense is a misdemeanor.
(I) Section 626.81.
(J) Section 647.6.
(K) Section 653c.
(L) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subdivision (c) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.
(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.
(2) This subdivision shall apply to the following offenses:
(A) A felony violation of subdivision (a) of Section 243.4.
(B) Section 647.6, if the offense is a misdemeanor.
(C) A felony violation of Section 311.1, subdivision (b), (c), or (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if

the person submits to the department a certified copy of a probation report filed in court that clearly states that all victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

(D) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(iii) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(iv) For the purposes of this subparagraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(3) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(i) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250)

of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(*l*) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in

violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(o) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

SEC. 322. Section 298.2 of the Penal Code is amended to read:

298.2. (a) Any person who is required to submit a specimen sample or print impression pursuant to this chapter who engages or attempts to engage in any of the following acts is guilty of a

felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years:

(1) Knowingly facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or thumb or palm print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter.

(2) Knowingly tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

SEC. 323. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens, samples, or print impressions.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank or database systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, saliva or buccal swab samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall

be included in the state summary criminal history information as soon as administratively practicable.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA samples and DNA profiles and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office, district attorneys' offices, and prosecuting city attorneys' offices, unless otherwise specifically authorized by this chapter. Dissemination of DNA specimens, samples, and DNA profiles and other forensic identification information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(h) Except as provided in subdivision (g) and in order to protect the confidentiality and privacy of database and data bank information, the Department of Justice and local public DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or forensic identification database or data bank information or its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

(i) (1) (A) Any person who knowingly uses an offender specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or for other than the identification of missing persons, or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, or for the identification of missing persons, in violation of this chapter, shall be punished by imprisonment in a county jail

not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(B) Any person who, for the purpose of financial gain, knowingly uses a specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes or for the identification of missing persons or who, for the purpose of financial gain, knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars ($10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses a specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars ($50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees available to the donor of the DNA.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency in its discretion to publicly disclose the fact of a DNA profile match, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person.

(j) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

(k) It is not a violation of this section for law enforcement to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case.

(*l*) It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(m) It is not a violation of this section for the DNA Laboratory of the Department of Justice, or an organization retained as an agent of the Department of Justice, or a local public laboratory to use anonymous records or criminal history information obtained pursuant to this chapter for training, research, statistical analysis of populations, or quality assurance or quality control.

(n) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(o) In order to maintain the computer system security of the Department of Justice DNA and Forensic Identification Database and Data Bank Program, the computer software and database structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

SEC. 324. Section 311.9 of the Penal Code is amended to read:

311.9. (a) Every person who violates subdivision (a) of Section 311.2 or Section 311.5 is punishable by fine of not more than one thousand dollars ($1,000) plus five dollars ($5) for each additional unit of material coming within the provisions of this chapter, which is involved in the offense, not to exceed ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, not to exceed a total of 360 days in the county jail, or by both that fine and imprisonment. If that person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of subdivision (a) of Section 311.2 or Section 311.5 is punishable as a felony *by imprisonment pursuant to subdivision (h) of Section 1170*.

(b) Every person who violates subdivision (a) of Section 311.4 is punishable by fine of not more than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. If that person has been previously convicted of a violation of former Section 311.3 or Section 311.4 he or she is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(c) Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. For a second and subsequent offense he or she shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the person has been twice convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony *by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 325. Section 313.4 of the Penal Code is amended to read:

313.4. Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars ($2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section

313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 326. Section 337.3 of the Penal Code is amended to read:

337.3. Any person who in the commission of touting falsely uses the name of any official of the California Horse Racing Board, its inspectors or attachés, or of any official of any race track association, or the names of any owner, trainer, jockey or other person licensed by the California Horse Racing Board as the source of any information or purported information is guilty of a felony and is punishable by a fine of not more than five thousand dollars ($5,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment.

SEC. 327. Section 337.7 of the Penal Code is amended to read:

337.7. Any person other than the lawful holder thereof who has in his possession any credential or license issued by the California Horse Racing Board to licensees and any person who has a forged or simulated credential or license of said board in his possession, and who uses such credential or license for the purpose of misrepresentation, fraud or touting is guilty of a felony and shall be punished by a fine of five thousand dollars ($5,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment. If he *or she* has previously been convicted of any offense under this chapter, he *or she* shall be imprisoned *pursuant to subdivision (h) of Section 1170*.

SEC. 328. Section 337b of the Penal Code is amended to read:

337b. Any person who gives, or offers or promises to give, or attempts to give or offer, any money, bribe, or thing of value, to any participant or player, or to any prospective participant or player, in any sporting event, contest, or exhibition of any kind whatsoever, except a wrestling exhibition as defined in Section 18626 of the Business and Professions Code, and specifically including, but without being limited to, such sporting events, contests, and exhibitions as baseball, football, basketball, boxing, horseracing, and wrestling matches, with the intention or understanding or agreement that such participant or player or such prospective participant or player shall not use his or her best efforts

to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition that any other player, participant or team of players or participants shall thereby be assisted or enabled to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition as to limit his or her or his or her team's margin of victory in such sporting event, contest, or exhibition, is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding five thousand dollars ($5,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 329. Section 337c of the Penal Code is amended to read:

337c. Any person who accepts, or attempts to accept, or offers to accept, or agrees to accept, any money, bribe or thing of value, with the intention or understanding or agreement that he or she will not use his or her best efforts to win any sporting event, contest, or exhibition of any kind whatsoever, except a wrestling exhibition as defined in Section 18626 of the Business and Professions Code, and specifically including, but without being limited to, such sporting events, contests, or exhibitions as baseball, football, basketball, boxing, horseracing, and wrestling matches, in which he or she is playing or participating or is about to play or participate in, or will so conduct himself or herself in such sporting event, contest, or exhibition that any other player or participant or team of players or participants shall thereby be assisted or enabled to win such sporting event, contest, or exhibition, or will so conduct himself or herself in such sporting event, contest, or exhibition as to limit his or her or his or her team's margin of victory in such sporting event, contest, or exhibition, is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding five thousand dollars ($5,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 330. Section 337d of the Penal Code is amended to read:

337d. Any person who gives, offers to give, promises to give, or attempts to give, any money, bribe, or thing of value to any person who is umpiring, managing, directing, refereeing, supervising, judging, presiding, or officiating at, or who is about to umpire, manage, direct, referee, supervise, judge, preside, or

officiate at any sporting event, contest, or exhibition of any kind whatsoever, including, but not limited to, sporting events, contests, and exhibitions such as baseball, football, boxing, horse racing, and wrestling matches, with the intention or agreement or understanding that the person shall corruptly or dishonestly umpire, manage, direct, referee, supervise, judge, preside, or officiate at, any sporting event, contest, or exhibition, or the players or participants thereof, with the intention or purpose that the result of the sporting event, contest, or exhibition will be affected or influenced thereby, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine of not more than ten thousand dollars ($10,000), or by imprisonment and fine. A second offense of this section is a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine of not more than fifteen thousand dollars ($15,000), or by both *that* imprisonment and fine.

SEC. 331. Section 337e of the Penal Code is amended to read:

337e. Any person who as umpire, manager, director, referee, supervisor, judge, presiding officer or official receives or agrees to receive, or attempts to receive any money, bribe or thing of value, with the understanding or agreement that such umpire, manager, director, referee, supervisor, judge, presiding officer, or official shall corruptly conduct himself or shall corruptly umpire, manage, direct, referee, supervise, judge, preside, or officiate at, any sporting event, contest, or exhibition of any kind whatsoever, and specifically including, but without being limited to, such sporting events, contests, and exhibitions as baseball, football, boxing, horseracing, and wrestling matches, or any player or participant thereof, with the intention or purpose that the result of the sporting event, contest, or exhibition will be affected or influenced thereby, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding five thousand dollars ($5,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 332. Section 337f of the Penal Code is amended to read:

337f. (a) Any person who does any of the following is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in ~~the state prison or in~~ a county jail not

exceeding one year, *or by imprisonment pursuant to subdivision (h) of Section 1170,* or by both that fine and imprisonment:

(1) Influences, or induces, or conspires with, any owner, trainer, jockey, groom, or other person associated with or interested in any stable, horse, or race in which a horse participates, to affect the result of that race by stimulating or depressing a horse through the administration of any drug to that horse, or by the use of any electrical device or any electrical equipment or by any mechanical or other device not generally accepted as regulation racing equipment, or so stimulates or depresses a horse.

(2) Knowingly enters any horse in any race within a period of 24 hours after any drug has been administered to that horse for the purpose of increasing or retarding the speed of that horse.

(3) Willfully or unjustifiably enters or races any horse in any running or trotting race under any name or designation other than the name or designation assigned to that horse by and registered with the Jockey Club or the United States Trotting Association or willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation duly assigned by and registered with the Jockey Club or the United States Trotting Association.

(b) For purposes of this section, the term "drug" includes all substances recognized as having the power of stimulating or depressing the central nervous system, respiration, or blood pressure of an animal, such as narcotics, hypnotics, benzedrine or its derivatives, but shall not include recognized vitamins or supplemental feeds approved by or in compliance with the rules and regulations or policies of the California Horse Racing Board.

SEC. 333. Section 350 of the Penal Code is amended to read:

350. (a) Any person who willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office, shall, upon conviction, be punishable as follows:

(1) When the offense involves less than 1,000 of the articles described in this subdivision, with a total retail or fair market value less than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by a fine of not more than ten thousand dollars ($10,000), or by

imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than two hundred thousand dollars ($200,000).

(2) When the offense involves 1,000 or more of the articles described in this subdivision, or has a total retail or fair market value equal to or greater than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by a fine not to exceed five hundred thousand dollars ($500,000), or by both that imprisonment and fine; or, if the person is a business entity, by a fine not to exceed one million dollars ($1,000,000).

(b) Any person who has been convicted of a violation of either paragraph (1) or (2) of subdivision (a) shall, upon a subsequent conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than one hundred thousand dollars ($100,000), or by imprisonment in a county jail for not more than one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than four hundred thousand dollars ($400,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose shall, if the person is an individual, be punished by a fine of not more than one hundred thousand dollars ($100,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than four hundred thousand dollars ($400,000).

(d) (1) Except as provided in paragraph (2), in any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other

disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, that were used in connection with, or were part of, any violation of this section.

(2) Upon request of any law enforcement agency and consent from the specific registrants, the court may consider a motion to have the items described in paragraph (1), not including recordings or audiovisual works as defined in Section 653w, donated to a nonprofit organization for the purpose of distributing the goods to persons living in poverty at no charge to the persons served by the organization.

(3) Forfeiture of the proceeds of the crime shall be subject to Chapter 9 (commencing with Section 186) of Title 7 of Part 1. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(A) A community property asset of a person other than the defendant.

(B) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(C) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(e) For the purposes of this section, the following definitions shall apply:

(1) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the number of "articles" shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) "Business entity" includes, but is not limited to, a corporation, limited liability company, or partnership. "Business entity" does not include a sole proprietorship.

(3) "Counterfeit mark" means a spurious mark that is identical with, or confusingly similar to, a registered mark and is used, or intended to be used, on or in connection with the same type of goods or services for which the genuine mark is registered. It is

not necessary for the mark to be displayed on the outside of an article for there to be a violation. For articles containing digitally stored information, it shall be sufficient to constitute a violation if the counterfeit mark appears on a video display when the information is retrieved from the article. The term "spurious mark" includes genuine marks used on or in connection with spurious articles and includes identical articles containing identical marks, where the goods or marks were reproduced without authorization of, or in excess of any authorization granted by, the registrant. When counterfeited but unassembled components of any articles described under subdivision (a) are recovered, including, but not limited to, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any articles described under subdivision (a), the number of "articles" shall be equivalent to the number of completed articles that could have been made from those components.

(4) "Knowingly possess" means that the person possessing an article knew or had reason to believe that it was spurious, or that it was used on or in connection with spurious articles, or that it was reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(5) Notwithstanding Section 7, "person" includes, but is not limited to, a business entity.

(6) "Registrant" means any person to whom the registration of a mark is issued and that person's legal representatives, successors, or assigns.

(7) "Sale" includes resale.

(8) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages or any other articles described under subdivision (a) are recovered, including, but not limited to, counterfeited digital disks, instruction manuals, licensing envelopes, labels, patches, fabric, stickers, wrappers, badges,

emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any articles described under subdivision (a), the "value" of those components shall be equivalent to the retail price or fair market value of the number of completed computer software packages or other completed articles described under subdivision (a) that could have been made from those components.

(C) "Retail or fair market value" of a counterfeit article means a value equivalent to the retail price or fair market value, as of the last day of the charged crime, of a completed similar genuine article containing a genuine mark.

(f) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the earliest effective date of registration of the service mark or trademark either with the Secretary of State or on the Principle Register of the United States Patent and Trademark Office.

(g) An owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of subdivision (a) occurs shall not be subject to a criminal penalty pursuant to this section, unless he or she sells, or possesses for sale, articles bearing a counterfeit mark in violation of this section. This subdivision shall not be construed to abrogate or limit any civil rights or remedies for a trademark violation.

(h) This section shall not be enforced against any party who engages in fair uses of a mark, as specified in Section 14247 of the Business and Professions Code.

(i) When a person is convicted of an offense under this section, the court shall order the person to pay restitution to the trademark owner and any other victim of the offense pursuant to Section 1202.4.

SEC. 334. Section 367f of the Penal Code is amended to read:

367f. (a) Except as provided in subdivisions (d) and (e), it shall be unlawful for any person to knowingly acquire, receive, sell, promote the transfer of, or otherwise transfer any human organ, for purposes of transplantation, for valuable consideration.

(b) Except as provided in subdivisions (d), (e), and (f), it shall be unlawful to remove or transplant any human organ with the knowledge that the organ has been acquired or will be transferred or sold for valuable consideration in violation of subdivision (a).

(c) For purposes of this section, the following definitions apply:

(1) "Human organ" includes, but is not limited to, a human kidney, liver, heart, lung, pancreas, or any other human organ or nonrenewable or nonregenerative tissue except plasma and sperm.

(2) "Valuable consideration" means financial gain or advantage, but does not include the reasonable costs associated with the removal, storage, transportation, and transplantation of a human organ, or reimbursement for those services, or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) No act respecting the nonsale donation of organs or other nonsale conduct pursuant to or in the furtherance of the purposes of the Uniform Anatomical Gift Act, Chapter 3.5 (commencing with Section 7150) Part 1 of Division 7 of the Health and Safety Code, including acts pursuant to anatomical gifts offered under Section 12811 of the Vehicle Code, shall be made unlawful by this section.

(e) This section shall not apply to the person from whom the organ is removed, nor to the person who receives the transplant, or those persons' next-of-kin who assisted in obtaining the organ for purposes of transplantations.

(f) A licensed physician and surgeon who transplants a human organ in violation of subdivision (b) shall not be criminally liable under that subdivision if the act is performed under emergency and life-threatening conditions.

(g) Any person who violates subdivision (a) or (b) shall be punished by a fine not to exceed fifty thousand dollars ($50,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, four, or five years, or *by* both *that fine and imprisonment*.

SEC. 335. Section 367g of the Penal Code is amended to read:

367g. (a) It shall be unlawful for anyone to knowingly use sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider's signature on a written consent form.

(b) It shall be unlawful for anyone to knowingly implant sperm, ova, or embryos, through the use of assisted reproduction technology, into a recipient who is not the sperm, ova, or embryo provider, without the signed written consent of the sperm, ova, or embryo provider and recipient.

(c) Any person who violates this section shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, four, or five years, by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(d) Written consent, for the purposes of this section, shall not be required of men who donate sperm to a licensed tissue bank.

SEC. 336. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft,

with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to

be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 337. Section 374.2 of the Penal Code is amended to read:

374.2. (a) It is unlawful for any person to maliciously discharge, dump, release, place, drop, pour, or otherwise deposit, or to maliciously cause to be discharged, dumped, released, placed, dropped, poured, or otherwise deposited, any substance capable of causing substantial damage or harm to the operation of a public sewer sanitary facility, or to deposit in commercial quantities any other substance, into a manhole, cleanout, or other sanitary sewer facility, not intended for use as a point of deposit for sewage, which is connected to a public sanitary sewer system, without possessing a written authorization therefor granted by the public entity which is charged with the administration of the use of the affected public sanitary sewer system or the affected portion of the public sanitary sewer system.

As used in this section, "maliciously" means an intent to do a wrongful act.

(b) For the purposes of this section "person" means an individual, trust, firm, partnership, joint stock company, limited liability company, or corporation, and "deposited in commercial quantities" refers to any substance deposited or otherwise discharged in any amount greater than for normal domestic sewer use.

(c) Lack of specific knowledge that the facility into which the prohibited discharge or release occurred is connected to a public sanitary sewer system shall not constitute a defense to a violation charged under this section.

(d) Any person who violates this section shall be punished by imprisonment in the county jail for not more than one year, or by a fine of up to twenty-five thousand dollars ($25,000), or by both a fine and imprisonment. If the conviction is for a second or subsequent violation, the person shall be punished by imprisonment in the county jail for not more than one year, or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16, 20, or 24 months, and by a fine of not less than five thousand

dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

SEC. 338. Section 374.8 of the Penal Code is amended to read:

374.8. (a) In any prosecution under this section, proof of the elements of the offense shall not be dependent upon the requirements of Title 22 of the California Code of Regulations.

(b) Any person who knowingly causes any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state is punishable by imprisonment in the county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of 16 months, two years, or three years, or by a fine of not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000), or by both the fine and imprisonment, unless the deposit occurred as a result of an emergency that the person promptly reported to the appropriate regulatory authority.

(c) For purposes of this section, "hazardous substance" means either of the following:

(1) Any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the environment, including, but not limited to, hazardous waste and any material that the administering agency or a handler, as defined in Chapter 6.91 (commencing with Section 25410) of Division 20 of the Health and Safety Code, has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment.

(2) Any substance or chemical product for which one of the following applies:

(A) The manufacturer or producer is required to prepare a MSDS, as defined in Section 6374 of the Labor Code, for the substance or product pursuant to the Hazardous Substances Information Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(B) The substance is described as a radioactive material in Chapter 1 of Title 10 of the Code of Federal Regulations maintained and updated by the nuclear Regulatory Commission.

(C) The substance is designated by the Secretary of Transportation in Chapter 27 (commencing with Section 1801) of the appendix to Title 49 of the United States Code and taxed as a radioactive substance or material.

(D) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

SEC. 339. Section 375 of the Penal Code is amended to read:

375. (a) It shall be unlawful to throw, drop, pour, deposit, release, discharge or expose, or to attempt to throw, drop, pour, deposit, release, discharge or expose in, upon or about any theater, restaurant, place of business, place of amusement or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses.

(b) It shall be unlawful to manufacture or prepare, or to possess any liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive, to any of the senses with intent to throw, drop, pour, deposit, release, discharge or expose the same in, upon or about any theater, restaurant, place of business, place of amusement, or any other place of public assemblage.

(c) Any person violating any of the provisions hereof shall be punished by imprisonment in the county jail for not less than three months and not more than one year, or by a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000), or by both ~~such~~ *that* fine and imprisonment.

(d) Any person who, in violating any of the provisions of subdivision (a), willfully employs or uses any liquid, gaseous or solid substance which may produce serious illness or permanent injury through being vaporized or otherwise dispersed in the air or who, in violating any of the provisions of subdivision (a), willfully employs or uses any tear gas, mustard gas or any of the combinations or compounds thereof, or willfully employs or uses acid or explosives, shall be guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 340. Section 382.5 of the Penal Code is amended to read:

382.5. Every person who sells, dispenses, administers or prescribes dinitrophenol for any purpose shall be guilty of a felony, punishable by a fine not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment.

This section shall not apply to dinitrophenol manufactured or sold as an economic poison registered under the provision of Section 12811 of the Food and Agricultural Code nor to sales for use in manufacturing or for scientific purposes, and not for human consumption.

SEC. 341. Section 382.6 of the Penal Code is amended to read:

382.6. Every person who sells, dispenses, administers or prescribes preparations containing diphenylamine, paraphenylenediamine, or paratoluylenediamine, or a derivative of any such chemicals, to be used as eyebrow and eyelash dye, shall be guilty of a felony, punishable by a fine not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment.

SEC. 342. Section 386 of the Penal Code is amended to read:

386. (a) Any person who willfully or maliciously constructs or maintains a fire-protection system in any structure with the intent to install a fire protection system which is known to be inoperable or to impair the effective operation of a system, so as to threaten the safety of any occupant or user of the structure in the event of a fire, shall be subject to imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(b) A violation of subdivision (a) which proximately results in great bodily injury or death is a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five, six, or seven years.

(c) As used in this section, “fire-protection system” includes, but is not limited to, an automatic fire sprinkler system, standpipe system, automatic fixed fire extinguishing system, and fire alarm system.

(d) For purposes of this section, the following definitions shall control:

(1) "Automatic fire sprinkler system" means an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards. The portion of the sprinkler system above ground is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are attached in a systematic pattern. The valve controlling each system riser is located in the system riser or its supply piping. Each sprinkler system riser includes a device for activating an alarm when the system is in operation. The system is normally activated by heat from a fire, and it discharges water over the fire area.

(2) "Standpipe system" means an arrangement of piping, valves, and hose connectors and allied equipment installed in a building or structure with the hose connectors located in a manner that water can be discharged in streams or spray patterns through attached hose and nozzles. The purpose of the system is to extinguish a fire, thereby protecting a building or structure and its contents and occupants. This system relies upon connections to water supply systems or pumps, tanks, and other equipment necessary to provide an adequate supply of water to the hose connectors.

(3) "Automatic fixed fire extinguishing system" means either of the following:

(A) An engineered fixed extinguishing system which is custom designed for a particular hazard, using components which are approved or listed only for their broad performance characteristics. Components may be arranged into a variety of configurations. These systems shall include, but not be limited to, dry chemical systems, carbon dioxide systems, halogenated agent systems, steam systems, high expansion foam systems, foam extinguishing systems, and liquid agent systems.

(B) A pre-engineered fixed extinguishing system is a system where the number of components and their configurations are included in the description of the system's approval and listing. These systems include, but are not limited to, dry chemical systems, carbon dioxide systems, halogenated agent systems, and liquid agent systems.

(4) "Fire alarm system" means a control unit and a combination of electrical interconnected devices designed and intended to cause an alarm or warning of fire in a building or structure by either

manual or automatic activation, or by both, and includes the systems installed throughout any building or portion thereof.

(5) "Structure" means any building, whether private, commercial, or public, or any bridge, tunnel, or powerplant.

SEC. 343. Section 387 of the Penal Code is amended to read:

387. (a) Any corporation, limited liability company, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a public offense punishable by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment; or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000); or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company the fine shall not exceed one million dollars ($1,000,000), if that corporation, limited liability company, or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following:

(A) Inform the Division of Occupational Safety and Health in the Department of Industrial Relations in writing, unless the corporation, limited liability company, or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the Division of Occupational Safety and Health in the Department of Industrial Relations, it shall be the responsibility of the Division of Occupational Safety and Health in the Department of Industrial Relations, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation, limited liability company, or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the Division of Occupational Safety and Health in the Department of Industrial Relations was not notified, but the corporation, limited liability company, or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8) of subdivision (d), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business that includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise that is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a serious concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious concealed danger to all individuals

working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(B) State Department of Health Services.

(C) Department of Agriculture.

(D) County departments of health.

(E) The United States Food and Drug Administration.

(F) The United States Environmental Protection Agency.

(G) The National Highway Traffic Safety Administration.

(H) The Federal Occupation Safety and Health Administration.

(I) The Nuclear Regulatory Commission.

(J) The Consumer Product Safety Commission.

(K) The Federal Aviation Administration.

(L) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to this section shall not be used against any manager in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) No person who is a manager of a limited liability company shall be personally liable for acts or omissions for which the limited liability company is liable under subdivision (a) solely by reason of being a manager of the limited liability company. A person who is a manager of a limited liability company may be held liable under subdivision (a) if that person is also a "manager" within the meaning of paragraph (1) of subdivision (b).

SEC. 344. Section 399.5 of the Penal Code is amended to read:

399.5. (a) Any person owning or having custody or control of a dog trained to fight, attack, or kill is guilty of a felony or a misdemeanor, punishable by imprisonment in ~~the state prison for two, three, or four years, or in~~ a county jail not to exceed one year, or *imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or* by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment, if, as a result of that person's failure to exercise ordinary care, the dog bites a human being, on two separate occasions or on one occasion

causing substantial physical injury. No person shall be criminally liable under this section, however, unless he or she knew or reasonably should have known of the vicious or dangerous nature of the dog, or if the victim failed to take all the precautions that a reasonable person would ordinarily take in the same situation.

(b) Following the conviction of an individual for a violation of this section, the court shall hold a hearing to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bite or bites have changed so as to remove the danger to other persons presented by the animal. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(c) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (a) based on a bite or bites inflicted upon a trespasser, upon a person who has provoked the dog or contributed to his or her own injuries, or by a dog used in military or police work if the bite or bites occurred while the dog was actually performing in that capacity. As used in this subdivision, "provocation" includes, but is not limited to, situations where a dog held on a leash by its owner or custodian reacts in a protective manner to a person or persons who approach the owner or custodian in a threatening manner.

(d) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 399 or any other provision of law.

(e) This section shall not apply to a veterinarian or an on-duty animal control officer while in the performance of his or her duties, or to a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, if he or she is assigned to a canine unit.

SEC. 345. Section 404.6 of the Penal Code is amended to read:

404.6. (a) Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot.

(b) Incitement to riot is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) Every person who incites any riot in the state prison or a county jail that results in serious bodily injury, shall be punished by either imprisonment in a county jail for not more than one year, or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(d) The existence of any fact that would bring a person under subdivision (c) shall be alleged in the complaint, information, or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by a plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

SEC. 346. Section 405b of the Penal Code is amended to read:

405b. Every person who participates in any lynching is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 347. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a deadly weapon other than a firearm in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm in any fight or quarrel is punishable as follows:

(A) If the violation occurs in a public place and the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in a county jail for not less than three months and not more than one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) In all cases other than that set forth in subparagraph (A), a misdemeanor, punishable by imprisonment in a county jail for not less than three months.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for 16 months, or two or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer, that he or she is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison *for 16 months, or two or three years*.

(d) Except where a different penalty applies, every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(e) As used in this section, "peace officer" means any person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) As used in this section, "public place" means any of the following:

(1) A public place in an incorporated city.

(2) A public street in an incorporated city.

(3) A public street in an unincorporated area.

SEC. 348. Section 417.3 of the Penal Code is amended to read:

417.3. Every person who, except in self-defense, in the presence of any other person who is an occupant of a motor vehicle proceeding on a public street or highway, draws or exhibits any

firearm, whether loaded or unloaded, in a threatening manner against another person in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or two or three years or by imprisonment for 16 months or two or three years and a three thousand dollar ($3,000) fine.

Nothing in this section shall preclude or prohibit prosecution under any other statute.

SEC. 349. Section 417.6 of the Penal Code, as amended by Section 2 of Chapter 478 of the Statutes of 2000, is amended to read:

417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(c) When a person is convicted of a violation of Section 417 or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 350. Section 417.6 of the Penal Code, as amended by Section 57 of Chapter 178 of the Statutes of 2010, is amended to read:

417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited

to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(c) When a person is convicted of a violation of Section 417 or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Sections 18000 and 18005.

SEC. 351. Section 422 of the Penal Code is amended to read:

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

"Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

SEC. 352. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in ~~the state prison or in~~ a county jail not to exceed one year, *or by imprisonment pursuant to subdivision (h) of Section 1170, or* by

a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of nine hundred fifty dollars ($950).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 353. Section 453 of the Penal Code is amended to read:

453. (a) Every person who possesses, manufactures, or disposes of any flammable, or combustible material or substance, or any incendiary device in an arrangement or preparation, with intent to willfully and maliciously use this material, substance, or device to set fire to or burn any structure, forest land, or property, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail, not exceeding one year.

(b) For the purposes of this section:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means a device that is constructed or designed to start an incendiary fire by remote, delayed, or instant means, but no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for the purposes of this section.

(3) "Incendiary fire" means a fire that is deliberately ignited under circumstances in which a person knows that the fire should not be ignited.

(c) Subdivision (a) does not prohibit the authorized use or possession of any material, substance or device described therein

by a member of the armed forces of the United States or by firemen, police officers, peace officers, or law enforcement officers authorized by the properly constituted authorities; nor does that subdivision prohibit the use or possession of any material, substance or device described therein when used solely for scientific research or educational purposes, or for disposal of brush under permit as provided for in Section 4494 of the Public Resources Code, or for any other lawful burning. Subdivision (a) does not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this subdivision.

SEC. 354. Section 455 of the Penal Code is amended to read:

455. Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any structure, forest land or property, or who commits any act preliminary thereto, or in furtherance thereof, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two or three years.

The placing or distributing of any flammable, explosive or combustible material or substance, or any device in or about any structure, forest land or property in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of the same shall, for the purposes of this act constitute an attempt to burn such structure, forest land or property.

SEC. 355. Section 461 of the Penal Code is amended to read:

461. Burglary is punishable as follows:

(a) Burglary in the first degree: by imprisonment in the state prison for two, four, or six years.

(b) Burglary in the second degree: by imprisonment in the county jail not exceeding one year or ~~in the state prison~~ *imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 356. Section 463 of the Penal Code is amended to read:

463. (a) Every person who violates Section 459, punishable as a second-degree burglary pursuant to subdivision (b) of Section 461, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. Any person convicted under this subdivision who is eligible

for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 240 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

For purposes of this section, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

(b) Every person who commits the crime of grand theft, as defined in Section 487, except grand theft of a firearm, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. Every person who commits the crime of grand theft of a firearm, as defined in Section 487, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison, as set forth in subdivision (a) of Section 489. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 160 hours of community service in any program deemed

appropriate by the court, including any program created to rebuild the community.

(c) Every person who commits the crime of petty theft, as defined in Section 488, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a misdemeanor, punishable by imprisonment in a county jail for six months. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 90 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(d) (1) For purposes of this section, "state of emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, "local emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to Section 8629 of the Government Code. For purposes of this section only, a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to Section 8630 of the Government Code.

(4) Consensual entry into a commercial structure with the intent to commit a violation of Section 470, 476, 476a, 484f, or 484g of the Penal Code, shall not be charged as a violation under this section.

SEC. 357. Section 464 of the Penal Code is amended to read:

464. Any person who, with intent to commit crime, enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of acetylene torch or electric arc, burning bar, thermal lance, oxygen lance, or any other similar device capable of burning through steel, concrete, or any other solid substance, or by use of nitroglycerine, dynamite, gunpowder, or any other explosive, is guilty of a felony and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of three, five, or seven years.

SEC. 358. Section 470a of the Penal Code is amended to read:

470a. Every person who alters, falsifies, forges, duplicates or in any manner reproduces or counterfeits any driver's license or identification card issued by a governmental agency with the intent that such driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in ~~the state prison, or by imprisonment in the~~ *a* county jail for not more than one year*, or by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 359. Section 470b of the Penal Code is amended to read:

470b. Every person who displays or causes or permits to be displayed or has in his *or her* possession any driver's license or identification card of the type enumerated in Section 470a with the intent that ~~such~~ *the* driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in ~~the state prison, or by imprisonment in the~~ *a* county jail for not more than one year*, or by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 360. Section 473 of the Penal Code is amended to read:

473. Forgery is punishable by imprisonment in ~~the state prison, or by imprisonment in the~~ *a* county jail for not more than one year*, or by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 361. Section 474 of the Penal Code is amended to read:

474. Every person who knowingly and willfully sends by telegraph or telephone to any person a false or forged message,

purporting to be from a telegraph or telephone office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph or telephone, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or telephone, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in ~~the state prison, or in the~~ *a* county jail not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by a* fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 362. Section 478 of the Penal Code is amended to read:

478. Counterfeiting is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 363. Section 479 of the Penal Code is amended to read:

479. Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces or nuggets, with the intention to sell, utter, put off or pass the same, or permits, causes or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 364. Section 480 of the Penal Code is amended to read:

480. (a) Every person who makes, or knowingly has in his or her possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years; and all dies, plates, apparatus, papers, metals, or machines intended for the purpose aforesaid, must be destroyed.

(b) (1) If the counterfeiting apparatus or machine used to violate this section is a computer, computer system, or computer network, the apparatus or machine shall be disposed of pursuant to Section 502.01.

(2) For the purposes of this section, "computer system" and "computer network" have the same meaning as that specified in Section 502. The terms "computer, computer system, or computer network" include any software or data residing on the computer, computer system, or computer network used in a violation of this section.

SEC. 365. Section 481 of the Penal Code is amended to read:

481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars or vessels of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad or steamship company, or any lessee thereof, or any other person, is punishable by imprisonment in ~~the state prison, or in the~~ *a* county jail, not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* fine not exceeding one thousand dollars, or by both ~~such~~ *that* imprisonment and fine.

SEC. 366. Section 483.5 of the Penal Code is amended to read:

483.5. (a) No deceptive identification document shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported, or imported or offered to be imported into this state unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) No document-making device may be possessed with the intent that the device will be used to manufacture, alter, or authenticate a deceptive identification document.

(c) As used in this section, "deceptive identification document" means any document not issued by a governmental agency of this state, another state, the federal government, a foreign government, a political subdivision of a foreign government, an international government, or an international quasi-governmental organization,

which purports to be, or which might deceive an ordinary reasonable person into believing that it is, a document issued by such an agency, including, but not limited to, a driver's license, identification card, birth certificate, passport, or social security card.

(d) As used in this section, "document-making device" includes, but is not limited to, an implement, tool, equipment, impression, laminate, card, template, computer file, computer disk, electronic device, hologram, laminate machine or computer hardware or software.

(e) Any person who violates or proposes to violate this section may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the Attorney General, any district attorney, or any city attorney prosecuting on behalf of the people of the State of California under Section 41803.5 of the Government Code in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any person.

(f) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that the deceptive identification document will be used for fraudulent purposes is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in ~~the~~ *a* county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. Any person who violates the provisions of subdivision (b) is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and a fine. Any document-making device may be seized by law enforcement and shall be forfeited to law enforcement or destroyed by order of the court upon a finding that the device was intended to be used to manufacture, alter, or authenticate a deceptive identification document. The court may make such a finding in the absence of a defendant for whom a bench warrant has been issued by the court.

SEC. 367. Section 484b of the Penal Code is amended to read:

484b. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds

were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* both that fine and that imprisonment if the amount diverted is in excess of two thousand three hundred fifty dollars ($2,350). If the amount diverted is less than or equal to two thousand three hundred fifty dollars ($2,350), the person shall be guilty of a misdemeanor.

SEC. 368. Section 484i of the Penal Code is amended to read:

484i. (a) Every person who possesses an incomplete access card, with intent to complete it without the consent of the issuer, is guilty of a misdemeanor.

(b) Every person who, with the intent to defraud, makes, alters, varies, changes, or modifies access card account information on any part of an access card, including information encoded in a magnetic stripe or other medium on the access card not directly readable by the human eye, or who authorizes or consents to alteration, variance, change, or modification of access card account information by another, in a manner that causes transactions initiated by that access card to be charged or billed to a person other than the cardholder to whom the access card was issued, is guilty of forgery.

(c) Every person who designs, makes, possesses, or traffics in card making equipment or incomplete access cards with the intent that the equipment or cards be used to make counterfeit access cards, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 369. Section 487b of the Penal Code is amended to read:

487b. Every person who converts real estate of the value of two hundred fifty dollars ($250) or more into personal property by severance from the realty of another, and with felonious intent to do so, steals, takes, and carries away that property is guilty of grand theft and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 370. Section 487d of the Penal Code is amended to read:

487d. Every person who feloniously steals, takes, and carries away, or attempts to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle box, or sulfurate machine, another's gold dust, amalgam, or quicksilver is guilty of grand theft and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 371. Section 489 of the Penal Code is amended to read:

489. Grand theft is punishable as follows:

(a) When the grand theft involves the theft of a firearm, by imprisonment in the state prison for 16 months, 2, or 3 years.

(b) In all other cases, by imprisonment in a county jail not exceeding one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 372. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in ~~a state prison, or in~~ a county jail for not more than one year, *or imprisonment pursuant to subdivision (h) of Section 1170*. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars ($950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars ($950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative

to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in ~~a state prison, or in~~ a county jail for not more than one year, *or imprisonment pursuant to subdivision (h) of Section 1170*.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of nine hundred fifty dollars ($950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in ~~the state prison, or in~~ a county jail for not more than one year, *or by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 373. Section 496a of the Penal Code is amended to read:

496a. (a) Every person who, being a dealer in or collector of junk, metals or secondhand materials, or the agent, employee, or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, mercury, iron or brass which he *or she* knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water or electric light company or county, city, city and county or other political subdivision of this state engaged in furnishing public utility service without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving ~~such~~ *that* property,

and is punishable, by imprisonment in ~~a state prison, or in~~ a county jail for not more than one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* a fine of not more than two hundred fifty dollars ($250), or by both ~~such~~ *that* fine and imprisonment.

(b) Any person buying or receiving material pursuant to subdivision (a) shall obtain evidence of his *or her* identity from the seller including, but not limited to, ~~such~~ *that* person's full name, signature, address, driver's license number, vehicle license number, and the license number of the vehicle delivering the material.

The record of the transaction shall include an appropriate description of the material purchased and such record shall be maintained pursuant to Section 21607 of the Business and Professions Code.

SEC. 374. Section 496d of the Penal Code is amended to read:

496d. (a) Every person who buys or receives any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle, trailer, special construction equipment, or vessel from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or two or three years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

SEC. 375. Section 499c of the Penal Code is amended to read:

499c. (a) As used in this section:

(1) "Access" means to approach, a way or means of approaching, nearing, admittance to, including to instruct, communicate with, store information in, or retrieve information from a computer system or computer network.

(2) "Article" means any object, material, device, or substance or copy thereof, including any writing, record, recording, drawing, sample, specimen, prototype, model, photograph, micro-organism, blueprint, map, or tangible representation of a computer program or information, including both human and computer readable information and information while in transit.

(3) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested.

(4) "Computer system" means a machine or collection of machines, one or more of which contain computer programs and information, that performs functions, including, but not limited to, logic, arithmetic, information storage and retrieval, communications, and control.

(5) "Computer network" means an interconnection of two or more computer systems.

(6) "Computer program" means an ordered set of instructions or statements, and related information that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions.

(7) "Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article.

(8) "Representing" means describing, depicting, containing, constituting, reflecting or recording.

(9) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Every person is guilty of theft who, with intent to deprive or withhold the control of a trade secret from its owner, or with an intent to appropriate a trade secret to his or her own use or to the use of another, does any of the following:

(1) Steals, takes, carries away, or uses without authorization, a trade secret.

(2) Fraudulently appropriates any article representing a trade secret entrusted to him or her.

(3) Having unlawfully obtained access to the article, without authority makes or causes to be made a copy of any article representing a trade secret.

(4) Having obtained access to the article through a relationship of trust and confidence, without authority and in breach of the obligations created by that relationship, makes or causes to be made, directly from and in the presence of the article, a copy of any article representing a trade secret.

(c) Every person who promises, offers or gives, or conspires to promise or offer to give, to any present or former agent, employee or servant of another, a benefit as an inducement, bribe or reward for conveying, delivering or otherwise making available an article representing a trade secret owned by his or her present or former principal, employer or master, to any person not authorized by the owner to receive or acquire the trade secret and every present or former agent, employee, or servant, who solicits, accepts, receives or takes a benefit as an inducement, bribe or reward for conveying, delivering or otherwise making available an article representing a trade secret owned by his or her present or former principal, employer or master, to any person not authorized by the owner to receive or acquire the trade secret, shall be punished by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(d) In a prosecution for a violation of this section, it shall be no defense that the person returned or intended to return the article.

SEC. 376. Section 499d of the Penal Code is amended to read:

499d. Any person who operates or takes an aircraft not his own, without the consent of the owner thereof, and with intent to either permanently or temporarily deprive the owner thereof of his title to or possession of such vehicle, whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in any operation or unauthorized taking or stealing is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in ~~the state prison, or in the~~ *a* county jail for not more than one year or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* a fine of not more than ten

thousand dollars ($10,000) or by both ~~such~~ *that* fine and imprisonment.

SEC. 377. Section 500 of the Penal Code is amended to read:

500. (a) Any person who receives money for the actual or purported purpose of transmitting the same or its equivalent to foreign countries as specified in Section 1800.5 of the Financial Code who fails to do at least one of the following acts unless otherwise instructed by the customer is guilty of a misdemeanor or felony as set forth in subdivision (b):

(1) Forward the money as represented to the customer within 10 days of receipt of the funds.

(2) Give instructions within 10 days of receipt of the customer's funds, committing equivalent funds to the person designated by the customer.

(3) Refund to the customer any money not forwarded as represented within 10 days of the customer's written request for a refund pursuant to subdivision (a) of Section 1810.5 of the Financial Code.

(b) (1) If the total value of the funds received from the customer is less than nine hundred fifty dollars ($950), the offense set forth in subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If the total value of the money received from the customer is nine hundred fifty dollars ($950) or more, or if the total value of all moneys received by the person from different customers is nine hundred fifty dollars ($950) or more, and the receipts were part of a common scheme or plan, the offense set forth in subdivision (a) is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, 2, or 3 years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

SEC. 378. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms

of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer,

computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access, or the denial of access to legitimate users of a computer system, network, or program.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(11) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting

documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation that does not result in injury, and where the value of the computer services used does not exceed nine hundred fifty dollars ($950), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds nine hundred fifty dollars ($950), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6) or (7) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000).

(B) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(4) Any person who violates paragraph (8) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year, or ~~in the state prison~~ *by imprisonment pursuant to subdivision (h) of Section 1170,* or by both that fine and imprisonment.

(5) Any person who violates paragraph (9) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not one thousand dollars.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of any of the provisions of subdivision (c) may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. Compensatory damages shall include any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(4) In any action brought pursuant to this subdivision for a willful violation of the provisions of subdivision (c), where it is proved by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice as defined in subdivision (c) of Section 3294 of the Civil Code, the court may additionally award punitive or exemplary damages.

(5) No action may be brought pursuant to this subdivision unless it is initiated within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to punish any acts which are committed by a person within the scope of his or her lawful employment. For purposes of this section, a person acts within the scope of his or her employment when he or she performs acts which are reasonably necessary to the performance of his or her work assignment.

(2) Paragraph (3) of subdivision (c) does not apply to penalize any acts committed by a person acting outside of his or her lawful employment, provided that the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or provided that the value of supplies or computer services, as defined in paragraph (4) of subdivision (b), which are used does not exceed an accumulated total of two hundred fifty dollars ($250).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 379. Section 506b of the Penal Code is amended to read:

506b. Any person who violates Section 2985.3 or 2985.4 of the Civil Code, relating to real property sales contracts, is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in ~~the state prison, or in~~ *a* the county jail not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by* both ~~such~~ *that* fine and imprisonment.

SEC. 380. Section 520 of the Penal Code is amended to read:

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery or carjacking, by means of force, or any threat, such as is mentioned in Section 519, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 381. Section 529 of the Penal Code is amended to read:

529. *(a)* Every person who falsely personates another in either his *or her* private or official capacity, and in ~~such~~ *that* assumed character ~~either~~ *does any of the following, is punishable pursuant to subdivision (b)*:

~~1.~~

(1) Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take ~~such~~ *that* bail or surety~~;~~.

~~2.~~

(2) Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true~~; or,~~.

~~3.~~

(3) Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or

prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person~~;~~.

~~Is punishable by~~

(b) By a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or *imprisonment pursuant to subdivision (h) of Section 1170, or* by both ~~such~~ *that* fine and imprisonment.

SEC. 382. Section 529a of the Penal Code is amended to read:

529a. Every person who manufactures, produces, sells, offers, or transfers to another any document purporting to be either a certificate of birth or certificate of baptism, knowing such document to be false or counterfeit and with the intent to deceive, is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in ~~the~~ *a* county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. Every person who offers, displays, or has in his or her possession any false or counterfeit certificate of birth or certificate of baptism, or any genuine certificate of birth which describes a person then living or deceased, with intent to represent himself or herself as another or to conceal his or her true identity, is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year.

SEC. 383. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

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

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

(2) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and who has previously been convicted of a violation of this section, upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(3) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of 10 or more other persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(d) (1) Every person who, with the intent to defraud, sells, transfers, or conveys the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Every person who, with actual knowledge that the personal identifying information, as defined in subdivision (b) of Section 530.55, of a specific person will be used to commit a violation of subdivision (a), sells, transfers, or conveys that same personal identifying information is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both a fine and imprisonment.

(e) Every person who commits mail theft, as defined in Section 1708 of Title 18 of the United States Code, is guilty of a public offense, and upon conviction therefor shall be punished by a fine,

by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Prosecution under this subdivision shall not limit or preclude prosecution under any other provision of law, including, but not limited to, subdivisions (a) to (c), inclusive, of this section.

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

SEC. 384. Section 532a of the Penal Code is amended to read:

532a. (1) Any person who shall knowingly make or cause to be made, either directly or indirectly or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself *or herself*, or any other person, firm or corporation, in whom he *or she* is interested, or for whom he *or she* is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the execution of a contract of guaranty or suretyship, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit of either himself *or herself* or of ~~such~~ *that* person, firm or corporation shall be guilty of a public offense.

(2) Any person who knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself *or herself*, or a person, firm or corporation in which he *or she* is interested, or for whom he *or she* is acting, procures, upon the faith thereof, for the benefit either of himself *or herself*, or of ~~such~~ *that* person, firm or corporation, either or any of the things of benefit mentioned in the first subdivision of this section shall be guilty of a public offense.

(3) Any person who knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself *or herself* or a person, firm or corporation, in which he *or she* is interested, or for whom he *or she* is acting, represents on a later day in writing that the statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procures

upon the faith thereof, for the benefit either of himself *or herself* or of ~~such~~ *that* person, firm or corporation either or any of the things of benefit mentioned in the first subdivision of this section shall be guilty of a public offense.

(4) Any person committing a public offense under subdivision (1), (2), or (3) shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six months, or by both ~~such~~ *that* fine and imprisonment. Any person who violates the provisions of subdivision (1), (2), or (3), by using a fictitious name, social security number, business name, or business address, or by falsely representing himself or herself to be another person or another business, is guilty of a felony and is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment, or by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(5) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction.

SEC. 385. Section 532f of the Penal Code is amended to read:

532f. (a) A person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

(1) Deliberately makes any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(2) Deliberately uses or facilitates the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(3) Receives any proceeds or any other funds in connection with a mortgage loan closing that the person knew resulted from a violation of paragraph (1) or (2) of this subdivision.

(4) Files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the

person knows to contain a deliberate misstatement, misrepresentation, or omission.

(b) An offense involving mortgage fraud shall not be based solely on information lawfully disclosed pursuant to federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

(c) (1) Notwithstanding any other provision of law, an order for the production of any or all relevant records possessed by a real estate recordholder in whatever form and however stored may be issued by a judge upon a written ex parte application made under penalty of perjury by a peace officer stating that there are reasonable grounds to believe that the records sought are relevant and material to an ongoing investigation of a felony fraud violation.

(2) The ex parte application shall specify with particularity the records to be produced, which shall relate to a party or parties in the criminal investigation.

(3) Relevant records may include, but are not limited to, purchase contracts, loan applications, settlement statements, closing statements, escrow instructions, payoff demands, disbursement reports, or checks.

(4) The ex parte application and any subsequent judicial order may be ordered sealed by the court upon a sufficient showing that it is necessary for the effective continuation of the investigation.

(5) The records ordered to be produced shall be provided to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the real estate recordholder.

(d) (1) Nothing in this section shall preclude the real estate recordholder from notifying a customer of the receipt of the order for production of records, unless a court orders the real estate recordholder to withhold notification to the customer upon a finding that this notice would impede the investigation.

(2) If a court has made an order to withhold notification to the customer under this subdivision, the peace officer who or law enforcement agency that obtained the records shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(e) (1) Nothing in this section shall preclude the real estate recordholder from voluntarily disclosing information or providing records to law enforcement upon request.

(2) This section shall not preclude a real estate recordholder, in its discretion, from initiating contact with, and thereafter communicating with and disclosing records to, appropriate state or local agencies concerning a suspected violation of any law.

(f) No real estate recordholder, or any officer, employee, or agent of the real estate recordholder, shall be liable to any person for either of the following:

(1) Disclosing information in response to an order pursuant to this section.

(2) Complying with an order under this section not to disclose to the customer the order, or the dissemination of information pursuant to the order.

(g) Any records required to be produced pursuant to this section shall be accompanied by an affidavit of a custodian of records of the real estate recordholder or other qualified witness which states, or includes in substance, all of the following:

(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.

(2) The identity of the records.

(3) A description of the mode of preparation of the records.

(4) The records were prepared by the personnel of the business in the regular course of business at or near the time of an act, condition, or event.

(5) Any copies of records described in the order are true copies.

(h) A person who violates this section is guilty of a public offense punishable by imprisonment in ~~the state prison or in~~ a county jail for not more than one year *or by imprisonment pursuant to subdivision (h) of Section 1170*.

(i) For the purposes of this section, the following terms shall have the following meanings:

(1) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(2) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(3) "Mortgage loan" means a loan or agreement to extend credit to a person that is secured by a deed of trust or other document

representing a security interest or lien upon any interest in real property, including the renewal or refinancing of the loan.

(4) "Real estate recordholder" means any person, licensed or unlicensed, that meets any of the following conditions:

(A) Is a title insurer that engages in the "business of title insurance" as defined by Section 12340.3 of the Insurance Code, an underwritten title company, or an escrow company.

(B) Functions as a broker or salesperson by engaging in any of the type of acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6 of the Business and Professions Code.

(C) Engages in the making or servicing of loans secured by real property.

(j) Fraud involving a mortgage loan may only be prosecuted under this section when the value of the alleged fraud meets the threshold for grand theft as set out in subdivision (a) of Section 487.

SEC. 386. Section 533 of the Penal Code is amended to read:

533. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barters, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 387. Section 535 of the Penal Code is amended to read:

535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in ~~the state prison, or in the~~ *a* county jail not exceeding one year, or by *imprisonment pursuant to subdivision (h) of Section 1170, or by a* fine not exceeding two thousand dollars ($2,000), or by both ~~such~~ *that* fine and

imprisonment, and, in addition, is disqualified for a period of three years from acting as an auctioneer in this state.

SEC. 388. Section 537e of the Penal Code is amended to read:

537e. (a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed nine hundred fifty dollars ($950), by imprisonment in a county jail not exceeding six months.

(2) If the value of the property exceeds nine hundred fifty dollars ($950), by imprisonment in a county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of nine hundred fifty dollars ($950) or more, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

(b) For purposes of this subdivision, "personal property" includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.

(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

(c) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision

of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(d) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his or her duly appointed direct representative, or under specific authorization from the original manufacturer.

SEC. 389. Section 538.5 of the Penal Code is amended to read:

538.5. Every person who transmits or causes to be transmitted by means of wire, radio or television communication any words, sounds, writings, signs, signals, or pictures for the purpose of furthering or executing a scheme or artifice to obtain, from a public utility, confidential, privileged, or proprietary information, trade secrets, trade lists, customer records, billing records, customer credit data, or accounting data by means of false or fraudulent pretenses, representations, personations, or promises is guilty of an offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in the county jail not exceeding one year.

SEC. 390. Section 548 of the Penal Code is amended to read:

548. (a) Every person who willfully injures, destroys, secretes, abandons, or disposes of any property which at the time is insured against loss or damage by theft, or embezzlement, or any casualty with intent to defraud or prejudice the insurer, whether the property is the property or in the possession of ~~such~~ *that* person or any other person, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years and by a fine not exceeding fifty thousand dollars ($50,000).

For purposes of this section, "casualty" does not include fire.

(b) Any person who violates subdivision (a) and who has a prior conviction of the offense set forth in that subdivision, in Section 550 of this code, or in former Section 556 or former Section 1871.1 of the Insurance Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided under subdivision (a). The existence of any fact which would subject a

person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 391. Section 549 of the Penal Code is amended to read:

549. Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two years, or three years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by *that* imprisonment ~~in the state prison~~ and a fine of fifty thousand dollars ($50,000). Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

SEC. 392. Section 550 of the Penal Code is amended to read:

550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining

a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(B) When the claim or amount at issue is nine hundred fifty dollars ($950) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds nine hundred fifty dollars ($950) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court

shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.

SEC. 393. Section 551 of the Penal Code is amended to read:

551. (a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder’s automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with

that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) For purposes of this section:

(1) “Automotive repair dealer” means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(2) "Contractor" has the same meaning as set forth in Section 7026 of the Business and Professions Code.

SEC. 394. Section 560 of the Penal Code is amended to read:

560. Any bailee, as defined in Section 7102 of the Uniform Commercial Code, who issues or aids in issuing a document of title, or any person who secures the issue by a bailee of a document of title, or any person who negotiates or transfers for value a document of title knowing that the goods for which ~~such~~ *that* document is issued have not been actually received by ~~such~~ *that* bailee or are not under his *or her* control at the time of issuing ~~such~~ *that* receipt shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not exceeding ten thousand dollars ($10,000) or by both *that fine and imprisonment*.

SEC. 395. Section 560.4 of the Penal Code is amended to read:

560.4. Any bailee, as defined in Section 7102 of the Uniform Commercial Code, who issues or aids in issuing a duplicate or additional negotiable document of title for goods knowing that a former negotiable document of title for the same goods or any part of them is outstanding and uncanceled without plainly placing upon the face thereof the word "duplicate," except in cases of bills in a set and documents issued as substitutes for lost, stolen or destroyed documents, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not exceeding ten thousand dollars ($10,000) or by both *that fine and imprisonment*.

SEC. 396. Section 566 of the Penal Code is amended to read:

566. It is a felony, punishable by a fine not exceeding one thousand five hundred dollars ($1,500), or by imprisonment *pursuant to subdivision (h) of Section 1170*, or both, for an unauthorized person to possess or use, or to obliterate or destroy the brand registration upon, containers (including milk cases), cabinets, or other dairy equipment, which have a value in excess of nine hundred fifty dollars ($950), when the containers, cabinets, or other dairy equipment are marked with a brand that is registered pursuant to Chapter 10 (commencing with Section 34501) of Part 1 of Division 15 of the Food and Agricultural Code. "Unauthorized

person" shall have the meaning of that term as defined in Section 34564 of the Food and Agricultural Code.

SEC. 397. Section 570 of the Penal Code is amended to read:

570. An act of unlawful subleasing of a motor vehicle, as defined in Section 571, shall be punishable by imprisonment in ~~the state prison or in the~~ *a* county jail for not more than one year, or *by imprisonment pursuant to subdivision (h) of Section 1170, or* by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

SEC. 398. Section 577 of the Penal Code is amended to read:

577. Every person, being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier or the master, owner or agent of such vessel, or of some officer or agent of ~~such~~ *that* company, to be forwarded as expressed in ~~such~~ *that* bill of lading, receipt or voucher, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding one thousand dollars ($1,000), or both.

SEC. 399. Section 578 of the Penal Code is amended to read:

578. Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of ~~such~~ *that* person, and is not under his *or her* actual control at the time of issuing such instrument, whether ~~such~~ *that* instrument is issued to a person as being the owner of ~~such~~ *that* merchandise or as security for any indebtedness, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding one thousand dollars ($1,000), or both.

SEC. 400. Section 580 of the Penal Code is amended to read:

580. Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in ~~such~~ *that* second receipt is outstanding and uncanceled,

without writing across the face of the same the word "Duplicate," in a plain and legible manner, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding one thousand dollars ($1,000), or both.

SEC. 401. Section 581 of the Penal Code is amended to read:

581. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him *or her*, without the consent in writing thereto of the person holding ~~such~~ *that* bill, receipt, or voucher, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding one thousand dollars ($1,000), or both.

SEC. 402. Section 587 of the Penal Code is amended to read:

587. Every person who maliciously~~,~~ *does* either *of the following is punishable by imprisonment pursuant to subdivision (h) of Section 1170, or imprisonment in a county jail not exceeding one year*:

~~1.~~

(a) Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad~~; or,~~.

~~2.~~

(b) Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad~~;~~.

~~Is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.~~

SEC. 403. Section 587.1 of the Penal Code is amended to read:

587.1. (a) Every person who maliciously moves or causes to be moved, without authorization, any locomotive, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year.

(b) Every person who maliciously moves or causes to be moved, without authorization, any locomotive, when the moving creates a substantial likelihood of causing personal injury or death to another, is guilty of a public offense punishable by imprisonment

in ~~the state prison, or in the~~ *a* county jail not exceeding one year *or by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 404. Section 591 of the Penal Code is amended to read:

591. A person who unlawfully and maliciously takes down, removes, injures, or obstructs any line of telegraph, telephone, or cable television, or any other line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof, or makes any unauthorized connection with any line, other than a telegraph, telephone, or cable television line, used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not exceeding five hundred dollars ($500), or imprisonment in the county jail not exceeding one year.

SEC. 405. Section 593 of the Penal Code is amended to read:

593. Every person who unlawfully and maliciously takes down, removes, injures, interferes with, or obstructs any line erected or maintained by proper authority for the purpose of transmitting electricity for light, heat, or power, or any part thereof, or any insulator or crossarm, appurtenance or apparatus connected therewith, or severs or in any way interferes with any wire, cable, or current thereof, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by fine not exceeding one thousand dollars ($1,000), or imprisonment in the county jail not exceeding one year.

SEC. 406. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more, vandalism is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars ($10,000) or more, by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court shall, when appropriate and feasible, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term “graffiti or other inscribed material” includes any unauthorized inscription, word, figure,

mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(g) This section shall become operative on January 1, 2002.

SEC. 407. Section 594.3 of the Penal Code is amended to read:

594.3. (a) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in ~~the state prison or by imprisonment in the~~ *a* county jail for not exceeding one year *or imprisonment pursuant to subdivision (h) of Section 1170*.

(b) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery, which is shown to have been a hate crime and to have been committed for the purpose of intimidating and deterring persons from freely exercising their religious beliefs, is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

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

SEC. 408. Section 594.35 of the Penal Code is amended to read:

594.35. Every person is guilty of a crime and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by imprisonment in a county jail for not exceeding one year, who maliciously does any of the following:

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or mortuary or any property in a cemetery or mortuary.

(b) Obliterates any grave, vault, niche, or crypt.

(c) Destroys, cuts, breaks or injures any mortuary building or any building, statuary, or ornamentation within the limits of a cemetery.

(d) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

SEC. 409. Section 594.4 of the Penal Code is amended to read:

594.4. (a) Any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense, punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail *not exceeding 6 months*, by a fine as specified in subdivision (b), or by both that imprisonment and fine.

(b) (1) If the amount of the defacement, damage, destruction, or contamination is fifty thousand dollars ($50,000) or more, by a fine of not more than fifty thousand dollars ($50,000).

(2) If the amount of the defacement, damage, destruction, or contamination is five thousand dollars ($5,000) or more, but less than fifty thousand dollars ($50,000), by a fine of not more than ten thousand dollars ($10,000).

(3) If the amount of defacement, damage, destruction, or contamination is nine hundred fifty dollars ($950) or more, but less than five thousand dollars ($5,000), by a fine of not more than five thousand dollars ($5,000).

(4) If the amount of the defacement, damage, destruction, or contamination is less than nine hundred fifty dollars ($950), by a fine of not more than one thousand dollars ($1,000).

(c) For purposes of this section, "structure" includes any house or other building being used at the time of the offense for a dwelling or for commercial purposes.

SEC. 410. Section 597 of the Penal Code is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of an offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and

imprisonment, or~~, alternatively,~~ by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both ~~the~~ *that* fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or ~~as a felony or alternatively punishable as a misdemeanor or a felony~~ *by imprisonment pursuant to subdivision (h) of Section 1170, or by that imprisonment* and by a fine of not more than twenty thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or~~, alternatively,~~ by imprisonment in the county jail for not more than one year, *or* by a fine of not more than twenty thousand dollars ($20,000), or by both ~~the~~ *that* fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) (1) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

(2) Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

(g) Notwithstanding any other provision of law, if a defendant is granted probation for a conviction under this section, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's

ability to pay. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care pursuant to Section 1830.205 of Title 7 of the California Code of Regulations or the targeted population criteria specified in Section 5600.3 of the Welfare and Institutions Code. The counseling specified in this subdivision shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. This provision specifies a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or county jail when such a sentence is otherwise appropriate. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This subdivision shall not apply to cases involving police dogs or horses as described in Section 600.

SEC. 411. Section 597.5 of the Penal Code is amended to read:

597.5. (a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment:

(1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog.

(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.

(3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.

(b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at

that exhibition, fighting, or injuring, is guilty of an offense punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) Nothing in this section shall prohibit any of the following:

(1) The use of dogs in the management of livestock, as defined by Section 14205 of the Food and Agricultural Code, by the owner of the livestock or his or her employees or agents or other persons in lawful custody thereof.

(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections 4002 and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

SEC. 412. Section 598c of the Penal Code is amended to read:

598c. (a) Notwithstanding any other provision of law, it is unlawful for any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that horse, if that person knows or should have known that any part of that horse will be used for human consumption.

(b) For purposes of this section, ~~"horse"~~ *"horse"* means any equine, including any horse, pony, burro, or mule.

(c) Violation of this section is a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(d) It is not the intent of this section to affect any commonly accepted commercial, noncommercial, recreational, or sporting activity that relates to horses.

(e) It is not the intent of this section to affect any existing law that relates to horse taxation or zoning.

SEC. 413. Section 598d of the Penal Code is amended to read:

598d. (a) Notwithstanding any other provision of law, horsemeat may not be offered for sale for human consumption. No restaurant, cafe, or other public eating place may offer horsemeat for human consumption.

(b) Violation of this section is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by confinement in jail for not less than 30 days nor more than two years, or by both that fine and confinement.

(c) A second or subsequent offense under this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for not less than two years nor more than five years.

SEC. 414. Section 600 of the Penal Code is amended to read:

600. (a) Any person who willfully and maliciously and with no legal justification strikes, beats, kicks, cuts, stabs, shoots with a firearm, administers any poison or other harmful or stupefying substance to, or throws, hurls, or projects at, or places any rock, object, or other substance which is used in such a manner as to be capable of producing injury and likely to produce injury, on or in the path of, any horse being used by, or any dog under the supervision of, any peace officer in the discharge or attempted discharge of his or her duties, is guilty of a public offense. If the injury inflicted is a serious injury, as defined in subdivision (c), the person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both a fine and imprisonment.

(b) Any person who willfully and maliciously and with no legal justification interferes with or obstructs any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail for not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both a fine and imprisonment.

(c) Any person who, in violation of this section, and with intent to inflict ~~such~~ *that* injury or death, personally causes the death, destruction, or serious physical injury including bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling, of any horse or dog, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year.

(d) Any person who, in violation of this section, and with the intent to inflict ~~such~~ *that* injury, personally causes great bodily injury, as defined in Section 12022.7, to any person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two years unless the conduct described in this subdivision is an element of any other offense of which the person is convicted or receives an enhancement under Section 12022.7.

(e) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency.

SEC. 415. Section 601 of the Penal Code is amended to read:

601. (a) Any person is guilty of trespass who makes a credible threat to cause serious bodily injury, as defined in subdivision (a) of Section 417.6, to another person with the intent to place that other person in reasonable fear for his or her safety, or the safety of his or her immediate family, as defined in subdivision (*l*) of Section 646.9, and who does any of the following:

(1) Within 30 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

(2) Within 30 days of the threat, knowing that the place is the threatened person's workplace, unlawfully enters into the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace premises without lawful purpose, and with the intent to execute the threat against the target of the threat.

(b) Subdivision (a) shall not apply if the residence, real property, or workplace described in paragraph (1) or (2) that is entered is the residence, real property, or workplace of the person making the threat.

(c) This section shall not apply to any person who is engaged in labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act,

Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(d) A violation of this section shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both ~~a~~ *that* fine and imprisonment.

SEC. 416. Section 610 of the Penal Code is amended to read:

610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 417. Section 617 of the Penal Code is amended to read:

617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 418. Section 620 of the Penal Code is amended to read:

620. Every person who willfully alters the purport, effect, or meaning of a telegraphic or telephonic message to the injury of another, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in ~~the~~ *a* county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 419. Section 621 of the Penal Code is amended to read:

621. Every person who maliciously destroys, cuts, breaks, mutilates, effaces, or otherwise injures, tears down, or removes any law enforcement memorial or firefighter's memorial is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by imprisonment in ~~the~~ *a* county jail for less than one year.

SEC. 420. Section 625b of the Penal Code is amended to read:

625b. (a) Every person who willfully injures or tampers with any aircraft or the contents or parts thereof, or removes any part of or from an aircraft without the consent of the owner, and every person who, with intent to commit any malicious mischief, injury or other crime, climbs into or upon an aircraft or attempts to manipulate any of the controls, starting mechanism, brakes or other

mechanism or device of an aircraft while it is at rest and unattended or who sets in motion any aircraft while it is at rest and unattended, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than six months or by a fine of not more than one thousand dollars ($1,000), or by both ~~such~~ *that* fine and imprisonment.

(b) Every person who willfully and maliciously damages, injures, or destroys any aircraft, or the contents or any part thereof, in such a manner as to render the aircraft unsafe for those flight operations for which it is designed and equipped is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

SEC. 421. Section 626.9 of the Penal Code, as amended by Section 146 of Chapter 83 of the Statutes of 1999, is amended to read:

626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming

the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to subdivision (b), (d), (e), or (h) of Section 12027.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

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

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in Section 12001.

(3) "Locked container" has the same meaning as that term is given in subdivision (c) of Section 12026.1.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 12025 and 12026.1.

(f) (1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 12025.

(B) By imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, five, or seven years.

(g) (1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 12001.6, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4, if probation is granted or if the execution or imposition of sentence

is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 12026, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 12026, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting

of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(*l*) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Section 12031.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8) of subdivision (b) of Section 12031.

SEC. 422. Section 626.9 of the Penal Code, as amended by Section 59 of Chapter 178 of the Statutes of 2010, is amended to read:

626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her

designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625, 25630, or 25645.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

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

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or

grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(f) (1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400.

(B) By imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, five, or seven years.

(g) (1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted

previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on

noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(*l*) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

SEC. 423. Section 626.95 of the Penal Code, as added by Section 1 of Chapter 750 of the Statutes of 1992, is amended to read:

626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or subdivision (b), of Section 417 , or Section 12025 or 12031, upon the grounds of or within a playground, or a public or private youth center during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, knowing that he or she is on or within those grounds, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years, or in a county jail not exceeding one year.

(b) State and local authorities are encouraged to cause signs to be posted around playgrounds and youth centers giving warning of prohibition of the possession of firearms upon the grounds of or within playgrounds or youth centers.

(c) For purposes of this section, the following definitions shall apply:

(1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city or county parks.

(2) "Youth center" means any public or private facility that is used to host recreational or social activities for minors while minors are present.

(d) It is the Legislature's intent that only an actual conviction of a felony of one of the offenses specified in this section would subject the person to firearms disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921).

SEC. 424. Section 626.95 of the Penal Code, as amended by Section 60 of Chapter 178 of the Statutes of 2010, is amended to read:

626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or subdivision (b), of Section 417, or 25400 or 25850, upon the grounds of or within a playground, or a public or private youth center during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, knowing that he or she is on or within those grounds, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years, or in a county jail not exceeding one year.

(b) State and local authorities are encouraged to cause signs to be posted around playgrounds and youth centers giving warning of prohibition of the possession of firearms upon the grounds of or within playgrounds or youth centers.

(c) For purposes of this section, the following definitions shall apply:

(1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city or county parks.

(2) "Youth center" means any public or private facility that is used to host recreational or social activities for minors while minors are present.

(d) It is the Legislature's intent that only an actual conviction of a felony of one of the offenses specified in this section would subject the person to firearms disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921).

SEC. 425. Section 626.10 of the Penal Code, as amended by Section 1 of Chapter 258 of the Statutes of 2009, is amended to read:

626.10. (a) (1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830)

of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice

pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 12601, or a stun gun, as defined in Section 12650, upon the grounds of or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 426. Section 626.10 of the Penal Code, as amended by Section 61 of Chapter 178 of the Statutes of 2010, is amended to read:

626.10. (a) (1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten

or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state

university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of

ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 16780, or a stun gun, as defined in Section 17230, upon the grounds of or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 427. Section 629.84 of the Penal Code is amended to read:

629.84. Any violation of this chapter is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~such~~ *that* fine and imprisonment ~~in the county jail or in the state prison~~.

SEC. 428. Section 631 of the Penal Code is amended to read:

631. (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both a fine and imprisonment in the county jail or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. If the person has previously been convicted of a violation

of this section or Section 632, 632.5, 632.6, 632.7, or 636, he or she is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by both ~~a~~ *that* fine and imprisonment ~~in the county jail or in the state prison~~.

(b) This section shall not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(d) This section shall become operative on January 1, 1994.

SEC. 429. Section 636 of the Penal Code is amended to read:

636. (a) Every person who, without permission from all parties to the conversation, eavesdrops on or records, by means of an electronic device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious adviser, or licensed physician, is guilty of a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(b) Every person who, intentionally and without permission from all parties to the conversation, nonelectronically eavesdrops upon a conversation, or any portion thereof, that occurs between a person who is in the physical custody of a law enforcement officer or other public officer and that person's attorney, religious adviser, or licensed physician, is guilty of a public offense. This subdivision applies to conversations that occur in a place, and under circumstances, where there exists a reasonable expectation of privacy, including a custody holding area, holding area, or

anteroom. This subdivision does not apply to conversations that are inadvertently overheard or that take place in a courtroom or other room used for adjudicatory proceedings. A person who is convicted of violating this subdivision shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or in ~~the~~ *a* county jail for a term not to exceed one year, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

(c) This section shall not apply to any employee of a public utility engaged in the business of providing service and facilities for telephone or telegraph communications while engaged in the construction, maintenance, conduct, or operation of the service or facilities of that public utility who listens in to conversations for the limited purpose of testing or servicing equipment.

SEC. 430. Section 637 of the Penal Code is amended to read:

637. Every person not a party to a telegraphic or telephonic communication who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of ~~such~~ *that* person, unless directed so to do by the lawful order of a court, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or in ~~the~~ *a* county jail not exceeding one year, or by fine not exceeding five thousand dollars ($5,000), or by both *that* fine and imprisonment.

SEC. 431. Section 647.6 of the Penal Code is amended to read:

647.6. (a) (1) Every person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child under 18 years of age, which conduct, if directed toward a child under 18 years of age, would be a violation of this section, shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

(b) Every person who violates this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion

of any other building, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail not exceeding one year, and by a fine not exceeding five thousand dollars ($5,000).

(c) (1) Every person who violates this section shall be punished upon the second and each subsequent conviction by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(2) Every person who violates this section after a previous felony conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5, or 289, any of which involved a minor under 16 years of age, or a previous felony conviction under this section, a conviction under Section 288, or a felony conviction under Section 311.4 involving a minor under 14 years of age shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, four, or six years.

(d) (1) In any case in which a person is convicted of violating this section and probation is granted, the court shall require counseling as a condition of probation, unless the court makes a written statement in the court record, that counseling would be inappropriate or ineffective.

(2) In any case in which a person is convicted of violating this section, and as a condition of probation, the court prohibits the defendant from having contact with the victim, the court order prohibiting contact shall not be modified except upon the request of the victim and a finding by the court that the modification is in the best interest of the victim. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(e) Nothing in this section prohibits prosecution under any other provision of law.

SEC. 432. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who

is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(d) *(1)* Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170.*

~~This~~

(2) This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be

punished by imprisonment in a county jail not exceeding one year, or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 433. Section 653h of the Penal Code is amended to read:

653h. (a) Every person is guilty of a public offense punishable as provided in subdivisions (b) and (c), who:

(1) Knowingly and willfully transfers or causes to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner.

(2) Transports for monetary or like consideration within this state or causes to be transported within this state any such article with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

(b) Any person who has been convicted of a violation of subdivision (a), shall be punished by imprisonment in the county jail not to exceed one year, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not to exceed five hundred thousand dollars ($500,000), or by both *that fine and imprisonment*, if the offense involves the transfer or transportation, or conduct causing that transfer or transportation, of not less than 1,000 of the articles described in subdivision (a).

(c) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (b), shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both *that fine and imprisonment*. A second or subsequent conviction under subdivision (a) not described in subdivision (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not to exceed two hundred thousand dollars ($200,000), or by both *that fine and imprisonment*.

(d) Every person who offers for sale or resale, or sells or resells, or causes the sale or resale, or rents, or possesses for these purposes, any article described in subdivision (a) with knowledge that the sounds thereon have been so transferred without the consent of the owner is guilty of a public offense.

(1) A violation of subdivision (d) involving not less than 100 of those articles shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed twenty thousand dollars ($20,000), or by both *that fine and imprisonment*. A second or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed fifty thousand dollars ($50,000), or by both *that fine and imprisonment*.

(2) A person who has been convicted of any violation of this subdivision not described in paragraph (1) shall be punished by imprisonment in the county jail not to exceed six months or by a fine not to exceed ten thousand dollars ($10,000), or by both *that fine and imprisonment*. A second conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or by a fine not to exceed twenty thousand dollars ($20,000), or by both *that fine and imprisonment*. A third or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed fifty thousand dollars ($50,000), or by both *that fine and imprisonment*.

(e) As used in this section, "person" means any individual, partnership, partnership's member or employee, corporation, limited liability company, association or corporation or association employee, officer or director; "owner" means the person who owns the original master recording embodied in the master phonograph record, master disc, master tape, master film or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded, and from which the transferred recorded sounds are directly or indirectly derived; and "master recording" means the original fixation of sounds upon a recording from which copies can be made.

(f) This section shall neither enlarge nor diminish the right of parties in private litigation.

(g) This section does not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or related uses, or for archival purposes.

(h) This section does not apply to any not-for-profit educational institution or any federal or state governmental entity, if the institution or entity has as a primary purpose the advancement of the public's knowledge and the dissemination of information regarding America's musical cultural heritage, provided that this purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document, and the institution or entity has, prior to the transfer, made a good faith effort to identify and locate the owner or owners of the sound recordings to be transferred and, provided that the owner or owners could not be and have not been located. Nothing in this section shall be construed to relieve an institution or entity of its contractual or other obligation to compensate the owners of sound recordings to be transferred. In order to continue the exemption permitted by this subdivision, the institution or entity shall make continuing efforts to locate such owners and shall make an annual public notice of the fact of the transfers in newspapers of general circulation serving the jurisdictions where the owners were incorporated or doing business at the time of initial affixations. The institution or entity shall keep on file a record of the efforts made to locate such owners for inspection by appropriate governmental agencies.

(i) This section applies only to ~~such~~ *those* articles that were initially mastered prior to February 15, 1972.

SEC. 434. Section 653j of the Penal Code is amended to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 215, 245, 246, 451, 459, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a period of three, five, or seven years. If the minor

is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) which exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 435. Section 653s of the Penal Code is amended to read:

653s. (a) Any person who transports or causes to be transported for monetary or other consideration within this state, any article containing sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance is guilty of a public offense punishable as provided in subdivision (g) or (h).

(b) As used in this section and Section 653u:

(1) "Live performance" means the recitation, rendering, or playing of a series of musical, spoken, or other sounds in any audible sequence thereof.

(2) "Article" means the original disc, wire, tape, film, phonograph record, or other recording device used to record or master the sounds of the live performance and any copy or reproduction thereof which duplicates, in whole or in part, the original.

(3) "Person" means any individual, partnership, partnership member or employee, corporation, association, or corporation or association employee, officer, or director, limited liability company, or limited liability company manager or officer.

(c) In the absence of a written agreement or operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds.

(d) For purposes of this section, a person who is authorized to maintain custody and control over business records reflecting the consent of the owner to the recordation or master recording of a live performance shall be a proper witness in any proceeding regarding the issue of consent.

Any witness called pursuant to this section shall be subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

(e) This section shall neither enlarge nor diminish the rights and remedies of parties to a recording or master recording which they might otherwise possess by law.

(f) This section shall not apply to persons engaged in radio or television broadcasting or cablecasting who record or fix the sounds of a live performance for, or in connection with, broadcast or cable transmission and related uses in educational television or radio programs, for archival purposes, or for news programs or purposes if the recordation or master recording is not commercially distributed independent of the broadcast or cablecast by or through the broadcasting or cablecasting entity to subscribers or the general public.

(g) Any person who has been convicted of a violation of subdivision (a), shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~*pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not to exceed five hundred thousand dollars ($500,000), or by both, if the offense involves the transportation or causing to be transported of not less than 1,000 articles described in subdivision (a).

(h) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (g) shall be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars ($50,000), or *by* both *that fine and imprisonment*. A second or subsequent conviction under subdivision (a) not described in subdivision (g) shall be punished by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed two hundred thousand dollars ($200,000), or by both *that fine and imprisonment*.

(i) Every person who offers for sale or resale, or sells or resells, or causes the sale or resale, or rents, or possesses for these purposes, any article described in subdivision (a) with knowledge that the sounds thereon have been so recorded or mastered without the consent of the owner of the sounds of a live performance is guilty of a public offense.

(1) A violation of subdivision (i) involving not less than 100 of those articles shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed twenty thousand dollars ($20,000), or by both *that fine and imprisonment*. A second or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed fifty thousand dollars ($50,000), or by both.

(2) A person who has been convicted of any violation of this subdivision not described in paragraph (1) shall be punished by imprisonment in the county jail not to exceed six months or by a fine not to exceed ten thousand dollars ($10,000), or by both *that fine and imprisonment*. A second conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or by a fine not to exceed twenty thousand dollars ($20,000), or by both *that fine and imprisonment*. A third or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed fifty thousand dollars ($50,000), or by both *that fine and imprisonment*.

SEC. 436. Section 653t of the Penal Code is amended to read:

653t. (a) A person commits a public offense if the person knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over an amateur or a citizen's band radio frequency, the purpose of which communication is to inform or inquire about an emergency.

(b) For purposes of this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury, in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of extensive damage or destruction, or in which that injury or destruction has occurred and the person transmitting is attempting to summon assistance.

(c) A violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), by

imprisonment in a county jail not to exceed six months, or by both, unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of ten thousand dollars ($10,000) occurs, in which event the offense is a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(d) Any person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of an emergency communication over a public safety radio frequency, when the offense results in serious bodily injury or property loss in excess of ten thousand dollars ($10,000), is guilty of a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

SEC. 437. Section 653u of the Penal Code is amended to read:

653u. (a) Any person who records or masters or causes to be recorded or mastered on any article with the intent to sell for commercial advantage or private financial gain, the sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance is guilty of a public offense punishable as provided in subdivisions (d) and (e).

(b) In the absence of a written agreement or operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds.

(c) *(1)* For purposes of this section, a person who is authorized to maintain custody and control over business records reflecting the consent of the owner to the recordation or master recording of a live performance shall be a proper witness in any proceeding regarding the issue of consent.

~~Any~~

(2) Any witness called pursuant to this section shall be subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

(d) Any person who has been convicted of a violation of subdivision (a) shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not to exceed five hundred thousand dollars ($500,000), or by both *that fine and imprisonment*, if the offense

involves the recording, mastering, or causing to be recorded or mastered at least 1,000 articles described in subdivision (a).

(e) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (d), shall be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars ($50,000), or by both *that fine and imprisonment*. A second or subsequent conviction under subdivision (a) not described in subdivision (d) shall be punished by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not to exceed two hundred thousand dollars ($200,000), or by both *that fine and imprisonment*.

SEC. 438. Section 653w of the Penal Code is amended to read:

653w. (a) *(1)* A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

~~As~~

(2) As used in this section, "recording" means any tangible medium upon which information or sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work.

~~As~~

(3) As used in this section, "audiovisual works" are the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the

material objects, such as films, tapes, discs, memory cards, flash drives, hard drives, data storage devices, or other devices, on which the works are embodied.

(b) Any person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertisement, offer for sale or resale, sale, rental, manufacture, or possession for these purposes, of at least 100 articles of audio recordings or 100 articles of audiovisual works described in subdivision (a), the person shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment ~~in the state prison~~*pursuant to subdivision (h) of Section 1170* for two, three, or five years, or by a fine not to exceed five hundred thousand dollars ($500,000), or by both *that fine and imprisonment*.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars ($50,000), or by both *that fine and imprisonment*.

(3) A second or subsequent conviction under subdivision (a) not described in paragraph (1), shall be punished by imprisonment in a county jail not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or by a fine not to exceed two hundred thousand dollars ($200,000), or by both *that fine and imprisonment*.

SEC. 439. Section 664 of the Penal Code is amended to read:

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, *or by imprisonment pursuant to subdivision (h) of Section 1170,* the person guilty of the attempt shall be punished by imprisonment in the state prison *or in a county jail, respectively,* for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life

imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) If the crime attempted is punishable by imprisonment in a county jail, the person guilty of the attempt shall be punished by imprisonment in a county jail for a term not exceeding one-half the term of imprisonment prescribed upon a conviction of the offense attempted.

(c) If the offense so attempted is punishable by a fine, the offender convicted of that attempt shall be punished by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense attempted.

(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision (a) of Section 190.2, a custodial officer, as that term is defined in subdivision (a) of Section 831 or subdivision (a) of Section 831.5, a custody assistant, as that term is defined in subdivision (a) of Section 831.7, or a nonsworn uniformed employee of a sheriff's department whose job entails the care or control of inmates in a detention facility, as defined in subdivision (c) of Section 289.6, and the person who commits the offense knows or reasonably should know that the victim is a peace officer, firefighter, custodial officer, custody assistant, or nonsworn uniformed employee of a sheriff's department engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

SEC. 440. Section 666 of the Penal Code is amended to read:

666. ~~(a)~~ Notwithstanding Section 490, every person who, having been convicted three or more times of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petty theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or ~~in the state prison~~ *imprisonment pursuant to subdivision (h) of Section 1170*.

~~(b) Notwithstanding Section 490, any person described in paragraph (1) who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.~~

~~(1) This subdivision shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.~~

~~(2) This subdivision shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.~~

SEC. 441. Section 666.5 of the Penal Code is amended to read:

666.5. (a) Every person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code, or

felony grand theft involving an automobile in violation of subdivision (d) of Section 487 or former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or felony grand theft involving a motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code in violation of former Section 487h, or a felony violation of Section 496d regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

(c) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 442. Section 667.5 of the Penal Code, as amended by November 7, 2006, by Section 9 of initiative Proposition 83, is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence *or a sentence of imprisonment in a county jail for more than one year* is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term *or county jail term of more than one year* served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term *or county jail term of more than one year* served prior to a period of five years in which the defendant remained free of both ~~prison custody and~~ the commission of an offense which results in a felony conviction, *and prison custody or jail custody of more than one year*.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall

include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) *(1)* Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

~~This~~

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 443. Section 667.5 of the Penal Code, as amended by Section 63 of Chapter 178 of the Statutes of 2010, is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence *or a sentence of imprisonment in a county jail for more than one year* is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term *or county jail term of more than one year* served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term *or county jail term of more than one year* served prior to a period of five years in which the defendant remained free of both ~~prison custody and~~ the commission of an offense which results in a felony conviction*, and prison custody or jail custody of more than one year*.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged

and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is

reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) *(1)* Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant

to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

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(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 444. Section 668 of the Penal Code is amended to read:

668. Every person who has been convicted in any other state, government, country, or jurisdiction of an offense for which, if committed within this state, that person could have been punished under the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state. The application of this section includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term *or a term pursuant to subdivision (h) of Section 1170*.

SEC. 445. Section 800 of the Penal Code is amended to read:

800. Except as provided in Section 799, prosecution for an offense punishable by imprisonment in the state prison *pursuant to subdivision (h) of Section 1170* for eight years or more shall be commenced within six years after commission of the offense.

SEC. 446. Section 801 of the Penal Code is amended to read:

801. Except as provided in Sections 799 and 800, prosecution for an offense punishable by imprisonment in the state prison *or pursuant to subdivision (h) of Section 1170* shall be commenced within three years after commission of the offense.

SEC. 447. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable

by imprisonment in the *state prison or imprisonment pursuant to subdivision (h) of* Section 1170, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4

(commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

SEC. 448. Section 836.6 of the Penal Code is amended to read:

836.6. (a) It is unlawful for any person who is remanded by a magistrate or judge of any court in this state to the custody of a sheriff, marshal, or other police agency, to thereafter escape or attempt to escape from that custody.

(b) It is unlawful for any person who has been lawfully arrested by any peace officer and who knows, or by the exercise of reasonable care should have known, that he or she has been so arrested, to thereafter escape or attempt to escape from that peace officer.

(c) Any person who violates subdivision (a) or (b) is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed one year. However, if the escape or attempted escape is by force or violence, and the person proximately causes a peace officer serious bodily injury, the person shall be punished by imprisonment ~~in the state prison~~*pursuant to subdivision (h) of Section 1170* for two, three, or four years, or by imprisonment in a county jail not to exceed one year.

SEC. 449. Section 1168 of the Penal Code is amended to read:

1168. (a) Every person who commits a public offense, for which any specification of three time periods of imprisonment in any *state prison or imprisonment pursuant to subdivision (h) of* Section 1170 is now prescribed by law or for which only a single term of imprisonment in state prison *or imprisonment pursuant to subdivision (h) of Section 1170* is specified shall, unless such convicted person be placed on probation, a new trial granted, or the imposing of sentence suspended, be sentenced pursuant to Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2.

(b) For any person not sentenced under such provision, but who is sentenced to be imprisoned in the *state prison or imprisonment pursuant to subdivision (h) of* Section 1170, including imprisonment not exceeding one year and one day, the court imposing the sentence shall not fix the term or duration of the period of imprisonment.

SEC. 450. Section 1170 of the Penal Code, as amended by Section 5 of Chapter 256 of the Statutes of 2010, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are

designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the

criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency

contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7, a violent felony described in subdivision (c) of Section 667.5, is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after July 1, 2011.

~~(h)~~

(i) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 451. Section 1170 of the Penal Code, as amended by Section 6 of Chapter 256 of the Statutes of 2010, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death

penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the

term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting

the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant has a prior or current felony conviction for a serious felony

described in subdivision (c) of Section 1192.7, a violent felony described in subdivision (c) of Section 667.5, is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after July 1, 2011.

~~(h)~~

(i) This section shall become operative on January 1, 2012.

SEC. 452. Section 1174.4 of the Penal Code, as amended by Section 42 of Chapter 854 of the Statutes of 2001, is amended to read:

1174.4. (a) Persons eligible for participation in this alternative sentencing program shall meet all of the following criteria:

(1) Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history of substance abuse who have one or more children under six years old at the time of entry into the program. For women with children, at least one eligible child shall reside with the mother in the facility.

(2) Never served a prior prison term for, nor been convicted in the present proceeding of, committing or attempting to commit, any of the following offenses:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Kidnapping.

(E) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(F) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd acts on a child under 14 years of age, as defined in Section 288.

(H) Any felony punishable by death or imprisonment in the state prison for life.

(I) Any felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use has been charged and proved.

(J) Robbery.

(K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(N) Rape or sexual penetration in concert, in violation of Section 264.1.

(O) Continual sexual abuse of a child in violation of Section 288.5.

(P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or sexual penetration.

(Q) Assault with a deadly weapon or with force likely to produce great bodily injury in violation of subdivision (a) of Section 245.

(R) Any violent felony defined in Section 667.5.

(S) A violation of Section 12022.

(T) A violation of Section 12308.

(U) Burglary of the first degree.

(V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

(3) Has not been sentenced to state prison for a term exceeding 36 months.

(b) Prior to sentencing, if the court proposes to give consideration to a placement, the court shall consider a written evaluation by the probation department, which shall include the following:

(1) Whether the defendant is eligible for participation pursuant to this section.

(2) Whether participation by the defendant and her eligible children is deemed to be in the best interests of the children.

(3) Whether the defendant is amenable to treatment for substance abuse and would benefit from participation in the program.

(4) Whether the program is deemed to be in the best interests of an eligible child of the defendant, as determined by a representative of the appropriate child welfare services agency of the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) The district attorney shall make a recommendation to the court as to whether or not the defendant would benefit from the program, which the court shall consider in making its decision. If the court's decision is without the concurrence of the district attorney, the court shall specify its reasons in writing and enter them into the record.

(d) If the court determines that the defendant may benefit from participation in this program, the court may impose a ~~state prison~~ sentence *of imprisonment pursuant to subdivision (h) of Section 1170* with the recommendation that the defendant participate in the program pursuant to this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

(e) The Director of Corrections shall consider the court's recommendation in making a determination on the inmate's placement in the program.

(f) Women accepted for the program by the Director of Corrections shall be delivered by the county, pursuant to Section 1202a, to the facility selected by the department. Before the director accepts a woman for the program, the county shall provide to the director the necessary information to determine her eligibility and appropriate placement status. Priority for services and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county, in which a program facility is located.

(g) Prior to being admitted to the program, each participant shall voluntarily sign an agreement specifying the terms and conditions of participation in the program.

(h) The department may refer inmates back to the sentencing court if the department determines that an eligible inmate has not been recommended for the program. The department shall refer the inmate to the court by an evaluative report so stating the department's assessment of eligibility, and requesting a recommendation by the court.

(i) Women who successfully complete the program, including the minimum of one year of transition services under intensive parole supervision, shall be discharged from parole. Women who do not successfully complete the program shall be returned to ~~the state prison~~ *imprisonment pursuant to subdivision (h) of Section 1170* where they shall serve their original sentences. These persons shall receive full credit against their original sentences for the time served in the program, pursuant to Section 2933.

SEC. 453. Section 1174.4 of the Penal Code, as amended by Section 72 of Chapter 178 of the Statutes of 2010, is amended to read:

1174.4. (a) Persons eligible for participation in this alternative sentencing program shall meet all of the following criteria:

(1) Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history of substance abuse who have one or more children under six years old at the time of entry into the program. For women with children, at least one eligible child shall reside with the mother in the facility.

(2) Never served a prior prison term for, nor been convicted in the present proceeding of, committing or attempting to commit, any of the following offenses:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Kidnapping.

(E) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(F) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd acts on a child under 14 years of age, as defined in Section 288.

(H) Any felony punishable by death or imprisonment in the state prison for life.

(I) Any felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use has been charged and proved.

(J) Robbery.

(K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(N) Rape or sexual penetration in concert, in violation of Section 264.1.

(O) Continual sexual abuse of a child in violation of Section 288.5.

(P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or sexual penetration.

(Q) Assault with a deadly weapon or with force likely to produce great bodily injury in violation of subdivision (a) of Section 245.

(R) Any violent felony defined in Section 667.5.

(S) A violation of Section 12022.

(T) A violation of Section 18745.

(U) Burglary of the first degree.

(V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

(3) Has not been sentenced to state prison for a term exceeding 36 months.

(b) Prior to sentencing, if the court proposes to give consideration to a placement, the court shall consider a written evaluation by the probation department, which shall include the following:

(1) Whether the defendant is eligible for participation pursuant to this section.

(2) Whether participation by the defendant and her eligible children is deemed to be in the best interests of the children.

(3) Whether the defendant is amenable to treatment for substance abuse and would benefit from participation in the program.

(4) Whether the program is deemed to be in the best interests of an eligible child of the defendant, as determined by a representative of the appropriate child welfare services agency of the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) The district attorney shall make a recommendation to the court as to whether or not the defendant would benefit from the program, which the court shall consider in making its decision. If the court's decision is without the concurrence of the district attorney, the court shall specify its reasons in writing and enter them into the record.

(d) If the court determines that the defendant may benefit from participation in this program, the court may impose a ~~state prison~~ sentence *of imprisonment pursuant to subdivision (h) of Section 1170* with the recommendation that the defendant participate in the program pursuant to this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

(e) The Director of Corrections shall consider the court's recommendation in making a determination on the inmate's placement in the program.

(f) Women accepted for the program by the Director of Corrections shall be delivered by the county, pursuant to Section 1202a, to the facility selected by the department. Before the director accepts a woman for the program, the county shall provide to the director the necessary information to determine her eligibility and appropriate placement status. Priority for services and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county, in which a program facility is located.

(g) Prior to being admitted to the program, each participant shall voluntarily sign an agreement specifying the terms and conditions of participation in the program.

(h) The department may refer inmates back to the sentencing court if the department determines that an eligible inmate has not been recommended for the program. The department shall refer the inmate to the court by an evaluative report so stating the department's assessment of eligibility, and requesting a recommendation by the court.

(i) Women who successfully complete the program, including the minimum of one year of transition services under intensive parole supervision, shall be discharged from parole. Women who do not successfully complete the program shall be returned to ~~the state prison~~ *imprisonment pursuant to subdivision (h) of Section 1170* where they shall serve their original sentences. These persons shall receive full credit against their original sentences for the time served in the program, pursuant to Section 2933.

SEC. 454. Section 1203.016 of the Penal Code is amended to read:

1203.016. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the correctional administrator, as defined in subdivision (h), to offer a program under which ~~minimum security inmates and low-risk offenders~~ *inmates* committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate *or involuntarily be placed* in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer.

(b) The board of supervisors, *in consultation with the correctional administrator,* may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply *or, for involuntary participation, the inmate shall be informed in writing that he or she shall comply,* with the rules and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The participant shall agree to the use of electronic monitoring, which may include global positioning system devices or other supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.

(4) The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.

(c) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

(d) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

(1) The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

(2) The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody. All persons referred or recommended by the court to participate in the home detention program pursuant to subdivision (e) who are denied participation or all persons removed from program participation shall be notified in writing of the specific reasons for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.

(e) The court may recommend or refer a person to the correctional administrator for consideration for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program.

(f) The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to the place of home detention not later than the expiration of any period of time during which he or she is authorized to be

away from the place of home detention pursuant to this section and unauthorized departures from the place of home detention are punishable as provided in Section 4532.

(g) The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2.

(h) As used in this section, ~~the following words have the following meanings: (1)~~ "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

~~(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section 1050 of Title 15 of the California Code of Regulations.~~

~~(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.~~

(i) Notwithstanding any other law, the police department of a city where an office is located to which persons on an electronic monitoring program report may ~~require~~ *request* the county correctional administrator to provide information concerning those persons. This information shall be limited to the name, address, date of birth, and offense committed by the home detainee. Any information received by a police department pursuant to this paragraph shall be used only for the purpose of monitoring the impact of home detention programs on the community.

(j) It is the intent of the Legislature that home detention programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer a home detention program

pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention program in any county without a written contract with that county's correctional administrator. However, this does not apply to the use of electronic monitoring by the ~~California~~ Department of Corrections ~~or the Department of the Youth Authority as established in Section 3004~~ *and Rehabilitation*. No public or private agency or entity entering into a contract may itself employ any person who is in the home detention program.

(2) Program acceptance shall not circumvent the normal booking process for sentenced offenders. All home detention program participants shall be supervised.

(3) (A) All privately operated home detention programs shall be under the jurisdiction of, and subject to the terms and conditions of the contract entered into with, the correctional administrator.

(B) Each contract shall include, but not be limited to, all of the following:

(i) A provision whereby the private agency or entity agrees to operate in compliance with any available standards promulgated by state correctional agencies and bodies, including the ~~Board of Corrections~~ *Corrections Standards Authority*, and all statutory provisions and mandates, state and county, as appropriate and applicable to the operation of home detention programs and the supervision of sentenced offenders in a home detention program.

(ii) A provision that clearly defines areas of respective responsibility and liability of the county and the private agency or entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs, that may arise from, or be proximately caused by, acts or omissions of the contractor. The contract shall provide for annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with statutory provisions and requirements or with the standards established by the contract and with the correctional administrator may be sufficient cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with whom there is a contract is not in compliance pursuant to this paragraph, the correctional administrator shall give 60 days' notice to the director of the private agency or entity that the contract may be canceled if the specified deficiencies are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public safety is present because the private agency or entity has failed to comply with this section.

(k) For purposes of this section, "evidence of financial responsibility" may include, but is not limited to, certified copies of any of the following:

(1) A current liability insurance policy.

(2) A current errors and omissions insurance policy.

(3) A surety bond.

SEC. 455. Section 1203.018 is added to the Penal Code, to read:

1203.018. (a) Notwithstanding any other law, this section shall only apply to inmates being held in lieu of bail and on no other basis.

(b) Notwithstanding any other law, the board of supervisors of any county may authorize the correctional administrator, as defined in paragraph (1) of subdivision (k), to offer a program under which inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if the conditions specified in subdivision (c) are met.

(c) (1) In order to qualify for participation in an electronic monitoring program pursuant to this section, the inmate must be an inmate with no holds or outstanding warrants to whom one of the following circumstances applies:

(A) The inmate has been held in custody for at least 30 calendar days from the date of arraignment pending disposition of only misdemeanor charges.

(B) The inmate has been held in custody pending disposition of charges for at least 60 calendar days from the date of arraignment.

(2) All participants shall be subject to discretionary review for eligibility and compliance by the correctional administrator consistent with this section.

(d) The board of supervisors, after consulting with the sheriff and district attorney, may prescribe reasonable rules and regulations under which an electronic monitoring program pursuant to this section may operate. As a condition of participation in the electronic monitoring program, the participant shall give his or her consent in writing to participate and shall agree in writing to comply with the rules and regulations of the program, including, but not limited to, all of the following:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The electronic monitoring may include global positioning system devices or other supervising devices for the purpose of helping to verify the participant's compliance with the rules and regulations of the electronic monitoring program. The electronic devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person

supervising the participant to be used solely for the purposes of voice identification.

(4) The correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section.

(5) A copy of the signed consent to participate and a copy of the agreement to comply with the rules and regulations shall be provided to the participant and a copy shall be retained by the correctional administrator.

(e) The rules and regulations and administrative policy of the program shall be reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to every participant.

(f) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody.

(g) (1) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in an electronic monitoring program only if the correctional administrator concludes that the person meets the criteria for release established under this section and that the person’s participation is consistent with any reasonable rules and regulations prescribed by the board

of supervisors or the administrative policy of the correctional administrator.

(2) The correctional administrator, or his or her designee, shall have discretionary authority consistent with this section to permit program participation as an alternative to physical custody. All persons approved by the correctional administrator to participate in the electronic monitoring program pursuant to subdivision (c) who are denied participation and all persons removed from program participation shall be notified in writing of the specific reasons for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.

(h) The correctional administrator may permit electronic monitoring program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance.

(i) Willful failure of the program participant to return to the place of home detention later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this section and unauthorized departures from the place of home detention is guilty of misdemeanor.

(j) The board of supervisors may prescribe a program administrative fee to be paid by each electronic monitoring participant.

(k) For purposes of this section, the following terms have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

(2) "Electronic monitoring program" includes, but is not limited to, home detention programs, work furlough programs, and work release programs.

(*l*) Notwithstanding any other law, upon request of a local law enforcement agency with jurisdiction over the location where a participant in an electronic monitoring program is placed, the correctional administrator shall provide the following information regarding participants in the electronic monitoring program:

(1) The participant's name, address, and date of birth.

(2) The offense or offenses alleged to have been committed by the participant.

(3) The period of time the participant will be placed on home detention.

(4) Whether the participant successfully completed the prescribed period of home detention or was returned to a county correctional facility, and if the person was returned to a county correctional facility, the reason for the return.

(5) The gender and ethnicity of the participant.

(m) Any information received by a law enforcement agency pursuant to subdivision (*l*) shall be used only for the purpose of monitoring the impact of home electronic monitoring programs in the community.

(n) It is the intent of the Legislature that electronic monitoring programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer an electronic monitoring program as provided in this section pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention program pursuant to this section in any county without a written contract with that county's correctional administrator. No public or private agency or entity entering into a contract pursuant to this subdivision may itself employ any person who is in the electronic monitoring program.

(2) Program participants shall undergo the normal booking process for arrestees entering the jail. All electronic monitoring program participants shall be supervised.

(3) (A) All privately operated electronic monitoring programs shall be under the jurisdiction of, and subject to the terms and conditions of the contract entered into with, the correctional administrator.

(B) Each contract specified in subparagraph (A) shall include, but not be limited to, all of the following:

(i) A provision whereby the private agency or entity agrees to operate in compliance with any available standards and all state and county laws applicable to the operation of electronic

monitoring programs and the supervision of offenders in an electronic monitoring program.

(ii) A provision that clearly defines areas of respective responsibility and liability of the county and the private agency or entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted to and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs that may arise from, or be proximately caused by, acts or omissions of the contractor.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that requires an annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(vi) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated electronic monitoring programs shall comply with all applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with state or county laws or with the standards established by the contract with the correctional administrator shall constitute cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with which there is a contract is not in compliance with this paragraph, the correctional administrator shall give 60 days' notice to the

director of the private agency or entity that the contract may be canceled if the specified deficiencies are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public safety is present because the private agency or entity has failed to comply with this section.

(H) For purposes of this section, "evidence of financial responsibility" may include, but is not limited to, certified copies of any of the following:

(i) A current liability insurance policy.

(ii) A current errors and omissions insurance policy.

(iii) A surety bond.

SEC. 456. Section 1208.2 of the Penal Code is amended to read:

1208.2. (a) (1) This section shall apply to individuals authorized to participate in a work furlough program pursuant to Section 1208, or to individuals authorized to participate in an electronic home detention program pursuant to Section 1203.016~~,~~ *or 1203.018,* or to individuals authorized to participate in a county parole program pursuant to Article 3.5 (commencing with Section 3074) of Chapter 8 of Title 1 of Part 3.

(2) As used in this section, as appropriate, "administrator" means the sheriff, probation officer, director of the county department of corrections, or county parole administrator.

(b) (1) A board of supervisors which implements programs identified in paragraph (1) of subdivision (a), may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except as provided in paragraph (2).

(2) With regard to a privately operated electronic home detention program pursuant to Section 1203.016 *or 1203.018,* the limitation, described in paragraph (1), in prescribing a program administrative fee and application fee shall not apply.

(c) The correctional administrator, or his or her designee, shall not have access to a person's financial data prior to granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(d) The correctional administrator, or his or her designee, shall not consider a person's ability or inability to pay all or a portion

of the program fee for the purposes of granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(e) For purposes of this section, "ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the administrator, or his or her designee, consider a period of more than six months from the date of acceptance into the program for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the person shall be able to obtain employment within the six-month period from the date of acceptance into the program.

(4) Any other factor that may bear upon the person's financial capability to reimburse the county for the fees fixed pursuant to subdivision (b).

(f) The administrator, or his or her designee, may charge a person the fee set by the board of supervisors or any portion of the fee and may determine the method and frequency of payment. Any fee the administrator, or his or her designee, charges pursuant to this section shall not in any case be in excess of the fee set by the board of supervisors and shall be based on the person's ability to pay. The administrator, or his or her designee, shall have the option to waive the fees for program supervision when deemed necessary, justified, or in the interests of justice. The fees charged for program supervision may be modified or waived at any time based on the changing financial position of the person. All fees paid by persons for program supervision shall be deposited into the general fund of the county.

(g) No person shall be denied consideration for, or be removed from, participation in any of the programs to which this section applies because of an inability to pay all or a portion of the program supervision fees. At any time during a person's sentence, the person may request that the administrator, or his or her designee, modify or suspend the payment of fees on the grounds of a change in circumstances with regard to the person's ability to pay.

(h) If the person and the administrator, or his or her designee, are unable to come to an agreement regarding the person's ability to pay, or the amount which is to be paid, or the method and frequency with which payment is to be made, the administrator, or his or her designee, shall advise the appropriate court of the fact that the person and administrator, or his or her designee, have not been able to reach agreement and the court shall then resolve the disagreement by determining the person's ability to pay, the amount which is to be paid, and the method and frequency with which payment is to be made.

(i) At the time a person is approved for any of the programs to which this section applies, the administrator, or his or her designee, shall furnish the person a written statement of the person's rights in regard to the program for which the person has been approved, including, but not limited to, both of the following:

(1) The fact that the person cannot be denied consideration for or removed from participation in the program because of an inability to pay.

(2) The fact that if the person is unable to reach agreement with the administrator, or his or her designee, regarding the person's ability to pay, the amount which is to be paid, or the manner and frequency with which payment is to be made, that the matter shall be referred to the court to resolve the differences.

(j) In all circumstances where a county board of supervisors has approved a program administrator, as described in ~~Sections 1203.016 and 1208~~ *Section 1203.016, 1203.018, or 1208*, to enter into a contract with a private agency or entity to provide specified program services, the program administrator shall ensure that the provisions of this section are contained within any contractual agreement for this purpose. All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

SEC. 457. Section 1213 of the Penal Code is amended to read:

1213. (a) When a probationary order or a judgment, other than of death, has been pronounced, a copy of the entry of that portion of the probationary order ordering the defendant confined in a city or county jail as a condition of probation, or a copy of the entry of the judgment, or, if the judgment is for imprisonment in the *state prison or imprisonment pursuant to subdivision (h) of* Section 1170, either a copy of the minute order or an abstract of the

judgment as provided in Section 1213.5, certified by the clerk of the court, and a Criminal Investigation and Identification (CII) number shall be forthwith furnished to the officer whose duty it is to execute the probationary order or judgment, and no other warrant or authority is necessary to justify or require its execution.

(b) If a copy of the minute order is used as the commitment document, the first page or pages shall be identical in form and content to that prescribed by the Judicial Council for an abstract of judgment, and other matters as appropriate may be added thereafter.

SEC. 458. Section 1230.1 is added to the Penal Code, to read:

1230.1. Each county local Community Corrections Partnership established pursuant to subdivision (b) of Section 1230 shall recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment. There is hereby established an executive committee of each county's Community Corrections Partnership consisting of the chief probation officer of the county, a chief of police, the sheriff, a county supervisor or the chief administrative officer for the county, and the head of the county department of social services for purposes related to the development and presentation of the plan. Consistent with local needs and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs.

SEC. 459. Section 1320 of the Penal Code is amended to read:

1320. (a) Every person who is charged with or convicted of the commission of a misdemeanor who is released from custody on his or her own recognizance and who in order to evade the process of the court willfully fails to appear as required, is guilty of a misdemeanor. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court.

(b) Every person who is charged with or convicted of the commission of a felony who is released from custody on his or her own recognizance and who in order to evade the process of

the court willfully fails to appear as required, is guilty of a felony, and upon conviction shall be punished by a fine not exceeding five thousand dollars ($5,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail for not more than one year, or by both that fine and imprisonment. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court.

SEC. 460. Section 1320.5 of the Penal Code is amended to read:

1320.5. Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony. Upon a conviction under this section, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail for not more than one year, or by both the fine and imprisonment. Willful failure to appear within 14 days of the date assigned for appearance may be found to have been for the purpose of evading the process of the court.

SEC. 461. Section 2057 is added to the Penal Code, to read:

2057. Counties are authorized to contract with the Department of Corrections and Rehabilitation for the commitment to the department, of persons who have suffered a felony conviction.

SEC. 462. Section 2600 of the Penal Code is amended to read:

2600. A person sentenced to imprisonment in a state prison *or to imprisonment pursuant to subdivision (h) of Section 1170* may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.

Nothing in this section shall be construed to permit the involuntary administration of psychotropic medication unless the process specified in the permanent injunction, dated October 31, 1986, in the matter of Keyhea v. Rushen, 178 Cal. App. 3d 526, has been followed. The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in Part III of the injunction shall be conducted by an administrative law judge. The hearing may, at the direction of the director, be conducted at the facility where the inmate is located.

Nothing in this section shall be construed to overturn the decision in Thor v. Superior Court, 5 Cal. 4th 725.

SEC. 463. Section 2650 of the Penal Code is amended to read:

2650. The person of a prisoner sentenced to imprisonment in the *state prison or to imprisonment pursuant to subdivision (h) of* Section 1170 is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not convicted or sentenced.

SEC. 464. Section 2772 of the Penal Code is amended to read:

2772. Any person who, without authority, interferes with or in any way interrupts the work of any prisoners employed pursuant to this article, and any person not authorized by law, who gives or attempts to give to any prisoner so employed any controlled substances or any intoxicating liquors of any kind whatever, or firearms, weapons or explosives of any kind, is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* and shall be disqualified from holding any state office or position in the employ of this state. Any person who interferes with the discipline or good conduct of any prisoner employed pursuant to this article, while ~~such~~ *that* prisoner is in the confines or limits of the state prison road camp is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a term not more than six months, or by a fine of not more than two hundred dollars ($200), or by both ~~such~~ *that* fine and imprisonment. Any peace officer or any officer or guard of any state prison or any superintendent of ~~such~~ *that* road work, having in charge the prisoners employed upon such highways or state roads, may arrest without a warrant any person violating any provisions of this article.

SEC. 465. Section 2790 of the Penal Code is amended to read:

2790. Any person, who, without authority, interferes with or in any way interrupts the work of any convict used pursuant to this article and any person not authorized by law, who gives or attempts to give to any state prison convict so employed any controlled substances, or any intoxicating liquors of any kind whatever, or firearms, weapons or explosives of any kind is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* and shall be disqualified from holding any state office or position in

the employ of this state. Any person who interferes with the discipline or good conduct of any convict used pursuant to this article, while ~~such~~ *that* convict is in such camps is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a term not more than six months, or by a fine of not more than four hundred dollars ($400), or by both ~~such~~ *that* fine and imprisonment. Any peace officer or any officer or guard of any state prison or any superintendent of ~~such~~ *that* work, having in charge the convicts used in ~~such~~ *those* camps, may arrest without a warrant any person violating any provisions of this article.

SEC. 466. Section 2900.5 of the Penal Code is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, ~~and including days~~ credited to the period of confinement pursuant to Section 4019, *and days served in home detention pursuant to Section 1203.018,* shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines and restitution fines.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of

custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program *pursuant to Section 1203.016, 1203.017, or 1203.018,* in lieu of imprisonment in a county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

~~(h) This section shall become operative on January 1, 1999.~~

SEC. 467. Section 2932 of the Penal Code is amended to read:

2932. (a) (1) For any time credit accumulated pursuant to Section 2931~~ or to Section~~, 2933, *or 4019*, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished

against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1), which could be prosecuted as a felony whether or not prosecution is undertaken.

(3) Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken.

(4) Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections *and Rehabilitation*. Any person confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for the act of misconduct or 180 days, whichever is less. Any person confined in a secure housing unit for having committed any misconduct specified in paragraph (1) in which great bodily injury is inflicted upon a nonprisoner shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for that act of misconduct. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon

a hearing and finding by the ~~director~~ *secretary, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department*.

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(5) The prisoner may appeal the decision through the department's review procedure, *or in the case of prisoners confined in local facilities as specified in Section 4019, through the sheriff's or director of the county correctional department's review procedure,* which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct described by the Department of Corrections *and Rehabilitation, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic, or other prison activity shall be deemed a failure to participate.

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections *and Rehabilitation* for serious disciplinary infractions if those procedures are not in conflict with this section, *or in the case of prisoners confined in local facilities as specified in Section 4019, by the sheriff or director of the county correctional department*.

(1) (A) The Department of Corrections *and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department*. The written notice shall include the specific charge,

the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at the hearing. The hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) The ~~Department of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.

(iv) The warden of the institution*, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* approves of the delay in writing.

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(C) The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.

(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation, or presentation of a defense at the disciplinary hearing if it is determined by the department, *or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* that: ~~(i)~~ *(A)* the prisoner is illiterate; or ~~(ii)~~ *(B)* the complexity of the issues or the prisoner's confinement status makes it unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing

has specific reasons to deny this request. The specific reasons shall be set forth in writing and a copy of the document shall be presented to the prisoner.

(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner may be found guilty on the basis of a preponderance of the evidence.

(d) If found guilty the prisoner shall be advised in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of time-credit loss. The prisoner may appeal the decision through the Department of ~~Corrections'~~ *Corrections and Rehabilitation's review procedure, or in the case of prisoners confined in local facilities as specified in Section 4019, the* review procedure *established by the sheriff or the director of the county correctional department*, and may, upon final notification of appeal denial, within 15 days of the notification demand review of the ~~department's~~ denial of credit to the Board of ~~Prison Terms~~ *Parole Hearings, or in the case of prisoners confined in local facilities as specified in Section 4019, the court with jurisdiction over the prisoner,* and the board *or the court* may affirm, reverse, or modify the ~~department's~~ decision or grant a hearing before the board *or the court* at which hearing the prisoner shall have the rights specified in Section 3041.5.

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his or her anticipated time-credit release date. The prisoner shall be notified of any change in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

(f) *(1)* If the conduct the prisoner is charged with also constitutes a crime, the Department of Corrections *and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* may refer the case to criminal authorities for possible prosecution. The department, *or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,*

shall notify the prisoner, who may request postponement of the disciplinary proceedings pending the referral.

~~The~~

(2) The prisoner may revoke his or her request for postponement of the disciplinary proceedings up until the filing of the accusatory pleading. In the event of the revocation of the request for postponement of the proceeding, the department *or the court* shall hold the hearing within 30 days of the revocation.

~~Notwithstanding~~

(3) Notwithstanding the notification requirements in this paragraph and subparagraphs (A) and (B) of paragraph (1) of subdivision (c), in the event the case is referred to criminal authorities for prosecution and the authority requests that the prisoner not be notified so as to protect the confidentiality of its investigation, no notice to the prisoner shall be required until an accusatory pleading is filed with the court, or the authority notifies the warden, in writing, that it will not prosecute or it authorizes the notification of the prisoner. The notice exceptions provided for in this paragraph shall only apply if the criminal authority requests of the warden, in writing, and within the 15 days provided in subparagraph (A) of paragraph (1) of subdivision (c), that the prisoner not be notified. Any period of delay of notice to the prisoner shall not exceed 30 days beyond the 15 days referred to in subdivision (c). In the event that no prosecution is undertaken, the procedures in subdivision (c) shall apply, and the time periods set forth in that subdivision shall commence to run from the date the warden is notified in writing of the decision not to prosecute. In the event the authority either cancels its requests that the prisoner not be notified before it makes a decision on prosecution or files an accusatory pleading, the provisions of this paragraph shall apply as if no request had been received, beginning from the date of the cancellation or filing.

~~In~~

(4) In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections *and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or the director of the county department of corrections,* shall not deny time credit where the prisoner is found not guilty and may deny credit if the prisoner is found guilty, in which case the procedures in subdivision (c) shall not apply.

(g) If time credit denial proceedings or criminal prosecution prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect the granting or revocation of credits attributable to that portion of the prisoner's sentence served prior to January 1, 1983.

SEC. 468. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the effective supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, or as otherwise provided in this article.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply *to any inmate subject to Section 3000.08*:

(1) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the ~~parole authority~~ *court* for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(2) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding 10 years, unless a longer period of parole is specified in Section 3000.1.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to subdivision (b) of Section 209, with the intent to commit a specified sex offense, or Section 667.51, 667.61, or 667.71, the period of parole shall be 10 years, unless a longer period of parole is specified in Section 3000.1.

(4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the case of a person convicted of and required to register as a sex offender for the commission of an offense specified in Section 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of Section 288, Section 288.5, or 289, in which one or more of the victims of the offense was a child under 14 years of age, the period of parole shall be 20 years *and six months* unless the ~~board~~ *court*, for good cause, determines that the person will be retained on parole. The ~~board~~ *court* shall make a written record of this determination and transmit a copy of it to the parolee.

(B) In the event of a retention on parole, the parolee shall be entitled to a review by the ~~board~~ *court* each year thereafter.

(C) There shall be a *court* hearing ~~as provided~~ *consistent with the procedures set forth* in Sections 3041.5 and 3041.7 within 12 months of the date of any ~~revocation of parole~~ *order returning the*

parolee to custody to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The ~~panel or board~~ *court* shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(D) The provisions of Section 3042 shall not apply to any hearing held pursuant to this subdivision.

(5) The ~~parole authority~~ *court* shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(6) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), (3), or (4), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), (3), and (4) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(7) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority *or the department, whichever is applicable*, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the *department or the* parole authority, *whichever is applicable*. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(8) For purposes of this chapter, the Board of Parole Hearings, *or where applicable, the court,* shall be considered the parole authority.

(9) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the ~~Board of Parole Hearings~~ *court*, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(10) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

SEC. 469. Section 3000.08 is added to the Penal Code, to read:

3000.08. (a) Persons released from state prison on or after July 1, 2011, after serving a prison term for any of the following felonies shall be subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county into which the parolee is released:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(b) Notwithstanding any other provision of law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(c) At any time during the period of parole of a person subject to this section, if any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of his or her parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for that person's arrest.

(d) Upon a hearing on the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated his or her conditions of parole, the court may impose additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and graduated sanctions for parole violations, including imprisonment in a county jail.

(e) (1) Upon its own motion or upon the petition of the parolee, parole agent, or the district attorney of the county in which the parolee is supervised, the court may modify the parole of the parolee pursuant to subdivision (b) of this subdivision. The court shall give notice of its motion, and the parole agent or the district attorney shall give notice of his or her petition to the parolee, his or her attorney of record, and the district attorney or the parole agent, as the case may be. The parolee shall give notice of his or her petition to the parole agent and notice of any motion or petition shall be given to the district attorney in all cases. The court shall refer its motion or the petition to the parole agent, and the parole agent shall prepare a written report regarding the facts and circumstances of the motion or petition to modify parole.

(2) After the receipt of a written report from the parole agent, the court shall read and consider the report and either its motion or the petition, and may modify the parole of the parolee upon the grounds set forth in subdivision (b) if the interests of justice so require. Upon the agreement by the parolee in writing to the specific terms of a modification of a specific term of parole, any

requirement that the parolee make a personal appearance in court for the purpose of a modification shall be waived.

(3) Prior to the modification of a specific term of parole and waiver of appearance, the parolee shall be informed of his or her right to consult with counsel if the modification of parole requires the parolee to serve a period of time in jail in excess of 14 days, or if the parolee is indigent, inform him or her of the right to secure court appointed counsel. If the parolee waives his or her right to counsel, a written waiver shall be required. If the parolee consults with counsel and thereafter agrees to a modification of the term of parole and waiver of personal appearance, the agreement shall be signed by counsel showing approval for the modification of parole and waiver of appearance.

(f) Notwithstanding any other provision of law, in any case where Section 3000.1 applies to a person who is on parole and there is good cause to believe that the person has committed a violation of law or violated his or her conditions of parole, and there is imposed a period of imprisonment of longer than 30 days, that person shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.

SEC. 470. Section 3000.09 is added to the Penal Code, to read:

3000.09. (a) Notwithstanding any other law, any parolee who was paroled from state prison prior to July 1, 2011, shall be subject to this section.

(b) Parolees subject to this section shall remain under supervision by the Department of Corrections and Rehabilitation until one of the following occurs:

(1) Jurisdiction over the person is terminated by operation of law.

(2) The supervising agent recommends to the jurisdictional authority that the offender be discharged and the jurisdictional authority approves the discharge.

(3) The offender, except an offender who if released from prison after July 1, 2011, would be subject to parole based on the criteria identified in subdivision (a) of Section 3000.08, completes six consecutive months of parole without violating their conditions, at which time the supervising agent shall review and make a recommendation on whether to discharge the offender to the

jurisdictional authority and the jurisdictional authority approves the discharge.

(c) Parolees subject to this section who are being held for a parole violation in county jail on July 1, 2011, shall be subject to the jurisdiction of the Board of Parole Hearings.

(d) Persons who are subject to this section and on parole for a serious felony described in subdivision (c) of Section 1192.7, a violent felony described in subdivision (c) of Section 667.5, a crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or any crime where the person released from prison was classified as a High Risk Sex Offender, whose parole is revoked, as ordered by the Board of Parole Hearings, shall be remanded to state prison. Upon completion of a revocation term for imprisonment in state prison, the parolee shall remain under the supervision of the Division of Adult Parole Operations. Any subsequent revocation action shall be conducted by the court in the county into which the parolee was released. Any subsequent term of imprisonment as ordered by the court for a violation of the person's conditions of parole shall be subject to Section 3000.08.

(e) Parolees subject to this section who are not on parole for a crime or with a classification described in subdivision (c) who violate the conditions of their parole on or after July 1, 2011, shall be under the jurisdiction of the court in the county into which the parolee was released. Persons returned to custody for any violation of a parole condition, as ordered by the court, shall serve any custody term in county jail.

(f) This section shall remain in effect until July 1, 2014, and on that date and thereafter any person, who is not on parole for a crime or with a classification described in subdivision (c), shall be discharged from parole.

SEC. 471. Section 3000.1 of the Penal Code is amended to read:

3000.1. (a) (1) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(2) Notwithstanding any other provision of law, in the case of any inmate sentenced to a life term under subdivision (b) of Section 209, if that offense was committed with the intent to commit a

specified sexual offense, Sections 269 and 288.7, subdivision (c) of Section 667.51, Section 667.71 in which one or more of the victims of the offense was a child under 14 years of age, or subdivision (j), (*l*), or (m) of Section 667.61, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the ~~board~~ *court* shall, within 30 days, discharge that person from parole, unless the ~~board~~ *court*, for good cause, determines that the person will be retained on parole. The ~~board~~ *court* shall make a written record of its determination and transmit a copy of it to the parolee.

(c) In the event of a retention on parole pursuant to subdivision (b), the parolee shall be entitled to a review by the ~~board~~ *court* each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole *pursuant to subdivision (d) of Section 3000.08* to consider the release of the inmate on parole and, notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

SEC. 472. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for ~~one year~~ *six months* since release from confinement, within 30

days, that person shall be discharged from parole, unless the Department of Corrections *and Rehabilitation* recommends to the ~~Board of Prison Terms~~ *court* that the person be retained on parole and the ~~board~~ *court*, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the ~~board~~ *court* that the person be retained on parole and the ~~board~~ *court*, for good cause, determines that the person will be retained. The ~~board~~ *court* shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement, the ~~board~~ *court* shall discharge, within 30 days, the person from parole, unless the ~~board~~ *court*, for good cause, determines that the person will be retained on parole. The ~~board~~ *court* shall ~~make a written record of its determination~~ *state its findings on the record* and the department shall transmit a copy ~~thereof~~ *of those findings* to the parolee.

(c) Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years *and six months* since release from confinement, the ~~board~~ *court* shall discharge, within 30 days, the person from parole, unless the ~~board~~ *court*, for good cause, determines that the person will be retained on parole. The ~~board~~ *court* shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

(e) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 473. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole *or postrelease supervision as provided by Title 2.05 (commencing with Section 3450)* shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would

increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate *or inmate placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450)* who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested

additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. *The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).*

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). *County agencies supervising inmates released to postrelease supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include the issuance of warrants, revocations, or the termination of postrelease supervision.*

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 474. Section 3056 of the Penal Code is amended to read:

3056. *(a)* Prisoners on parole shall remain under the legal custody of the department ~~and~~ *but* shall *not* be ~~subject at any time to be taken back within the inclosure of the prison~~ *returned to prison except as provided in subdivision (b).*

(b) Inmates paroled pursuant to Section 3000.1 may be returned to prison following the revocation of parole by a court pursuant to Section 3000.08.

SEC. 475. Section 3057 of the Penal Code, as amended by Section 10 of Chapter 747 of the Statutes of 2007, is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

(e) Commencing July 1, 2011, this section shall only apply to inmates sentenced to a term of life imprisonment.

SEC. 476. Section 3057 of the Penal Code, as amended by Section 83 of Chapter 178 of the Statutes of 2010, is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole

revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12022, 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part

6, any provision listed in Section 16590, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

(e) Commencing July 1, 2011, this section shall only apply to inmates sentenced to a term of life imprisonment.

SEC. 477. Section 3060 of the Penal Code is repealed.

~~3060. The parole authority shall have full power to suspend or revoke any parole, and to order returned to prison any prisoner upon parole. The written order of the parole authority shall be a sufficient warrant for any peace or prison officer to return to actual custody any conditionally released or paroled prisoner.~~

SEC. 478. Section 3061 of the Penal Code is repealed.

~~3061. It is hereby made the duty of all peace officers to execute any such order in like manner as ordinary criminal process.~~

SEC. 479. Title 2.05 (commencing with Section 3450) is added to Part 3 of the Penal Code, to read:

TITLE 2.05. POSTRELEASE COMMUNITY SUPERVISION ACT OF 2011

3450. (a) This act shall be known and may be cited as the Postrelease Community Supervision Act of 2011.

(b) The Legislature finds and declares all of the following:

(1) The Legislature reaffirms its commitment to reducing recidivism among criminal offenders.

(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.

(3) Criminal justice policies that rely on the reincarceration of parolees for technical violations do not result in improved public safety.

(4) California must reinvest its criminal justice resources to support community corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society.

(6) Community corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for offenders paroled from state prison. Each county's local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for persons subject to postrelease community supervision.

(7) Fiscal policy and correctional practices should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) "Community-based punishment" means evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Intermediate sanctions may be provided by local public safety entities directly or through public or private correctional service providers and include, but are not limited to, the following:

(A) Short-term "flash" incarceration in jail for a period of not more than seven days.

(B) Intensive community supervision.

(C) Home detention with electronic monitoring or GPS monitoring.

(D) Mandatory community service.

(E) Restorative justice programs, such as mandatory victim restitution and victim-offender reconciliation.

(F) Work, training, or education in a furlough program pursuant to Section 1208.

(G) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2.

(H) Day reporting.

(I) Mandatory residential or nonresidential substance abuse treatment programs.

(J) Mandatory random drug testing.

(K) Mother-infant care programs.

(L) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

(9) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

3451. (a) Notwithstanding any other law and except for persons serving a prison term for any crime described in subdivision (b), all persons released from prison on and after July 1, 2011, after serving a prison term for a felony shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency designated by each county's board of supervisors which is consistent with evidence-based practices, including, but not limited to, supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under postrelease supervision.

(b) This section shall not apply to any person released from prison after having served a prison term for any of the following:

(1) A serious felony described in subdivision (c) of Section 1192.7.

(2) A violent felony described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(c) (1) Postrelease supervision under this title shall be implemented by a county agency according to a postrelease strategy designated by each county's board of supervisors.

(2) The Department of Corrections and Rehabilitation shall inform every prisoner subject to the provisions of this title, upon release from state prison, of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that inmate. The department shall also inform persons serving a term of parole for a felony offense who are subject to this section of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that parolee. Thirty days prior to the release of any person subject to postrelease supervision by a county, the department shall notify the county of all information that would otherwise be required for parolees under subdivision (e) of Section 3003.

3452. (a) Persons eligible for postrelease community supervision pursuant to this title shall enter into a postrelease community supervision agreement prior to, and as a condition of, their release from prison. Persons on parole transferred to postrelease community supervision shall enter into a postrelease community supervision agreement as a condition of their release from state prison.

(b) A postrelease community supervision agreement shall specify the following:

(1) The person's release date and the maximum period the person may be subject to postrelease supervision under this title.

(2) The name, address, and telephone number of the county agency responsible for the person's postrelease supervision.

(3) An advisement that if a person breaks the law or violates the conditions of release, he or she can be incarcerated in a county jail regardless of whether or not new charges are filed.

3453. A postrelease community supervision agreement shall include the following conditions:

(a) The person shall sign and agree to the conditions of release.

(b) The person shall obey all laws.

(c) The person shall report to the supervising county agency within two working days of release from custody.

(d) The person shall follow the directives and instructions of the supervising county agency.

(e) The person shall report to the supervising county agency as directed by that agency.

(f) The person, and his or her residence and possessions, shall be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer.

(g) The person shall waive extradition if found outside the state.

(h) The person shall inform the supervising county agency of the person's place of residence, employment, education, or training.

(i) (1) The person shall inform the supervising county agency of any pending or anticipated changes in residence, employment, education, or training.

(2) If the person enters into new employment, he or she shall inform the supervising county agency of the new employment within three business days of that entry.

(j) The person shall immediately inform the supervising county agency if he or she is arrested or receives a citation.

(k) The person shall obtain the permission of the supervising county agency to travel more than 50 miles from the person's place of residence.

(*l*) The person shall obtain a travel pass from the supervising county agency before he or she may leave the county or state for more than two days.

(m) The person shall not be in the presence of a firearm or ammunition, or any item that appears to be a firearm or ammunition.

(n) The person shall not possess, use, or have access to any weapon listed in Section 12020, 16140, subdivision (c) of Section 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision (b) of Section 16460, Section 16470, subdivision (f) of Section 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200,

20310, 20410, 20510, 20611, 20710, 20910, 21110, 21310, 21810, 22010, 22015, 22210, 22215, 22410, 32430, 24310, 24410, 24510, 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415, 32420, 32425, 32435, 32440, 32445, 32450, 32900, 33215, 33220, 33225, or 33600.

(o) (1) Except as provided in paragraph (2) and subdivision (p), the person shall not possess a knife with a blade longer than two inches.

(2) The person may possess a kitchen knife with a blade longer than two inches if the knife is used and kept only in the kitchen of the person's residence.

(p) The person may use a knife with a blade longer than two inches, if the use is required for that person's employment, the use has been approved in a document issued by the supervising county agency, and the person possesses the document of approval at all times and makes it available for inspection.

(q) The person agrees to waive any right to a court hearing prior to the imposition of a period of "flash incarceration" in a county jail of not more than seven consecutive days, and not more than 14 aggregate days, for any violation of his or her postrelease supervision conditions.

(r) The person agrees to participate in rehabilitation programming as recommended by the supervising county agency.

3454. (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison and the offender's criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision consistent with those listed in Section 3453, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate,

structured, and graduated sanctions up to and including imprisonment in a county jail.

3455. (a) The court shall establish a process to determine violations of conditions of postrelease supervision. Upon a finding that the person has violated the conditions of supervision, the court shall have authority to do all of the following:

(1) Impose additional conditions of supervision and sanctions without ordering a custodial sanction.

(2) Modify the person's supervision with additional conditions and sanctions.

(3) Revoke and terminate supervision where the person has been convicted of a new misdemeanor or felony.

(b) Confinement pursuant to a violation of conditions of postrelease supervision shall not exceed a period of 12 months in the county jail.

(c) Periods of "flash incarceration," as defined in subdivision (e), are encouraged as one method of punishment for violations of an offender's conditions of postrelease supervision.

(d) In no case shall a person be under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease supervision.

(e) "Flash incarceration" is a period of detention in county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 14 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

3456. The county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease supervision over a person under postrelease supervision pursuant to this title until one of the following events occurs:

(a) The person has been subject to postrelease supervision pursuant to this title for three years at which time the offender shall be immediately discharged from postrelease supervision.

(b) Any person on postrelease supervision for six consecutive months with no violations of his or her conditions of postrelease supervision may be considered for immediate discharge upon recommendation by the supervising county agency to the court, and that discharge is granted.

(c) Jurisdiction over the person has been terminated by operation of law.

(d) Jurisdiction is transferred to another supervising county agency.

(e) Jurisdiction is terminated by the court upon a motion by the supervising county agency.

3457. The Department of Corrections and Rehabilitation shall have no jurisdiction over any person who is under postrelease community supervision pursuant to this title.

3458. No person subject to this title shall be returned to prison for a violation of any condition of the person's postrelease supervision agreement.

SEC. 480. Section 4011.7 of the Penal Code is amended to read:

4011.7. Notwithstanding the provisions of Sections 4011 and 4011.5, when it appears that the prisoner in need of medical or surgical treatment necessitating hospitalization or in need of medical or hospital care was arrested for, charged with, or convicted of an offense constituting a misdemeanor, the court in proceedings under Section 4011 or the sheriff or jailer in action taken under Section 4011.5 may direct that the guard be removed from the prisoner while he *or she* is in the hospital. If ~~such~~ *that* direction is given, any ~~such~~ prisoner who knowingly escapes or attempts to escape from ~~such~~ *that* hospital shall upon conviction thereof be guilty of a misdemeanor and punishable by imprisonment for not to exceed one year in the county jail if ~~such~~ *the* escape or attempt to escape was not by force or violence. However, if ~~such~~ *the* escape is by force or violence ~~such~~ *the* prisoner shall be guilty of a felony and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail for not exceeding one year; provided, that when ~~such~~ *that* second term of imprisonment is to be served in the county jail it shall commence from the time ~~such~~ *that* prisoner would otherwise be discharged from ~~such~~ *that* jail.

SEC. 481. Section 4016.5 of the Penal Code is amended to read:

4016.5. A city or county shall be reimbursed by the Department of Corrections and Rehabilitation for costs incurred resulting from the detention of a state prisoner~~,~~ *or* a person sentenced or referred to the state prison~~, or a parolee and from parole revocation proceedings~~ when the detention meets any of the following conditions:

~~(a) The detention relates to a violation of the conditions of parole or the rules and regulations of the Secretary of the Department of Corrections and Rehabilitation and does not relate to a new criminal charge.~~

~~(b) The detention is pursuant to (1) an order of the Board of Parole Hearings under the authority granted by Section 3060, or (2) an order of the Governor under the authority granted by Section 3062 or (3) an exercise of a state parole or correctional officer's peace officer powers as specified in Section 830.5.~~

~~(c) Security services and facilities are provided for hearings which are conducted by the Board of Parole Hearings to revoke parole.~~

~~(d)~~

(a) (1) The detention results from a new commitment, or a referral pursuant to Section 1203.03, once the abstract of judgment has been completed, the department's intake control unit has been notified by the county that the prisoner is ready to be transported pursuant to Section 1216, and the department is unable to accept delivery of the prisoner. The reimbursement shall be provided for each day starting on the day following the fifth working day after the date of notification by the county, if the prisoner remains ready to be delivered and the department is unable to receive the prisoner. If a county delivers or attempts to deliver a person to the department without the prior notification required by this paragraph, the date of the delivery or attempted delivery shall be recognized as the notification date pursuant to this paragraph. The notification and verification required by the county for prisoners ready to be transported, and reimbursement provided to the county for prisoners that the department is unable to receive, shall be made pursuant to procedures established by the department.

~~A~~

(2) A city or county shall be reimbursed by the department ~~from funds appropriated in Item 5240-101-0001 of the Budget Act of 1998 for costs incurred pursuant to subdivisions (a), (b), and (c) and~~ from funds appropriated in Item 5240-001-0001 of ~~that act~~ *the annual Budget Act* for costs incurred pursuant to *this* subdivision ~~(d)~~.

~~The~~

(3) The reimbursement required by this section shall be expended for maintenance, upkeep, and improvement of jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of reimbursement authorized by this section. The net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of the net reimbursement to a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 only if the county is failing to make reasonable efforts to correct differences, with consideration given to the resources available for those purposes.

~~"Costs~~

(4) "Costs incurred resulting from the detention," as used in this section, shall include the same cost factors as are utilized by the Department of Corrections and Rehabilitation in determining the cost of prisoner care in state correctional facilities.

~~(e)~~

(b) No city, county, or other jurisdiction may file, and the state may not reimburse, a claim pursuant to this section that is presented to the Department of Corrections and Rehabilitation or to any other agency or department of the state more than six months after the close of the month in which the costs were incurred.

(c) The changes to this section made by the act that added this subdivision shall be effective on July 1, 2011.

SEC. 482. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest

to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) Subject to the provisions of subdivision (d), for each ~~six-day~~ *four-day* period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each ~~six-day~~ *four-day* period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of ~~six~~ *four* days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of ~~six~~ *four* days will be deemed to have been served for every ~~four~~ *two* days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after July 1, 2011. Any days earned by a prisoner prior to July 1, 2011, shall be calculated at the rate required by the prior law.

SEC. 483. Section 4131.5 of the Penal Code is amended to read:

4131.5. Every person confined in, sentenced to, or serving a sentence in, a city or county jail, industrial farm, or industrial road camp in this state, who commits a battery upon the person of any individual who is not himself *or herself* a person confined or sentenced therein, is guilty of a public offense and is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170,* or in a county jail for not more than one year.

SEC. 484. Section 4501.1 of the Penal Code is amended to read:

4501.1. (a) Every person confined in the state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years. Every state prison inmate convicted of a felony under this section shall serve his or her term of imprisonment as prescribed in Section 4501.5.

(b) For purposes of this section, "gassing" means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person's skin or membranes.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The warden or other person in charge of the state prison shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

(e) The Department of Corrections *and Rehabilitation* shall report to the Legislature, by January 1, 2000, its findings and recommendations on gassing incidents at the state prison and the medical testing authorized by this section. The report shall include, but not be limited to, all of the following:

(1) The total number of gassing incidents at each state prison facility up to the date of the report.

(2) The disposition of each gassing incident, including the administrative penalties imposed, the number of incidents that are

prosecuted, and the results of those prosecutions, including any penalties imposed.

(3) A profile of the inmates who commit the aggravated batteries, including the number of inmates who have one or more prior serious or violent felony convictions.

(4) Efforts that the department has taken to limit these incidents, including staff training and the use of protective clothing and goggles.

(5) The results and costs of the medical testing authorized by this section.

(f) Nothing in this section shall preclude prosecution under both this section and any other provision of law.

SEC. 485. Section 4502 of the Penal Code is amended to read:

4502. (a) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, possesses or carries upon his or her person or has under his or her custody or control any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, to be served consecutively.

(b) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, manufactures or attempts to manufacture any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, to be served consecutively.

(c) For purposes of this section, "penal institution" means the state prison, a prison road camp, prison forestry camp, or other prison camp or farm, or a county jail or county road camp.

SEC. 486. Section 4530 of the Penal Code is amended to read:

4530. (a) Every prisoner confined in a state prison who, by force or violence, escapes or attempts to escape therefrom and every prisoner committed to a state prison who, by force or violence, escapes or attempts to escape while being conveyed to or from ~~such~~ *that* prison or any other state prison, or any prison road camp, prison forestry camp, or other prison camp or prison farm or any other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape from any prison road camp, prison forestry camp, or other prison camp or prison farm or other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape while at work outside or away from prison under custody of prison officials, officers, or employees, is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of two, four, or six years. The second term of imprisonment of a person convicted under this subdivision shall commence from the time he *or she* would otherwise have been discharged from prison. No additional probation report shall be required with respect to ~~such~~ *that* offense.

(b) Every prisoner who commits an escape or attempts an escape as described in subdivision (a), without force or violence, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years to be served consecutively. No additional probation report shall be required with respect to such offense.

(c) The willful failure of a prisoner who is employed or continuing his education, or who is authorized to secure employment or education, or who is temporarily released pursuant to Section 2690, 2910, or 6254, or Section 3306 of the Welfare and Institutions Code, to return to the place of confinement not later than the expiration of a period during which he or she is authorized to be away from the place of confinement, is an escape from the place of confinement punishable as provided in this section. A conviction of a violation of this subdivision, not involving force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

SEC. 487. Section 4532 of the Penal Code is amended to read:

4532. (a) (1) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an inebriate, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, *1203.017, or 1203.018*, and who thereafter escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from the place of confinement in a home detention program pursuant to Section 1203.016, *1203.017, or 1203.018* is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program pursuant to Section 1203.016, *1203.017, or 1203.018* that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of

the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, or is confined pursuant to Section 4011.9, is a participant in a home detention program pursuant to Section 1203.016, *1203.017, or 1203.018* who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) Notwithstanding any other law, every inmate who is a participant in an alternative custody program pursuant to Section 1170.05 who escapes or attempts to escape from the program is guilty of a misdemeanor.

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be

confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, "main jail facility" means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, "secure" means that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

(4) If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

(5) Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

(e) The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement. This subdivision applies to a prisoner who is employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or permitted to participate in a home detention program pursuant to Section 1203.016, *1203.017, or 1203.018*. A prisoner convicted of a misdemeanor who willfully fails to return to his or her place of confinement under this subdivision shall be punished as provided in paragraph (1) of subdivision (a). A prisoner convicted of a felony who willfully fails to return to his or her place of confinement shall be punished as provided in paragraph (1) of subdivision (b).

SEC. 488. Section 4533 of the Penal Code is amended to read:

4533. Every keeper of a prison, sheriff, deputy sheriff, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of

any prisoner in custody, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, and fine not exceeding ten thousand dollars ($10,000).

SEC. 489. Section 4536 of the Penal Code is amended to read:

4536. (a) Every person committed to a state hospital or other public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from such state hospital or other public or private mental health facility, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in the county jail not to exceed one year. The term imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed as a mentally disordered sex offender shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 490. Section 4550 of the Penal Code is amended to read:

4550. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue any prisoner from any prison, or prison road camp or any jail or county road camp, or from any officer or person having him *or her* in lawful custody, is punishable as follows:

~~1.~~

(a) If ~~such~~ *the* prisoner was in custody upon a conviction of a felony punishable with death~~:~~*,* by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years~~;~~.

~~2.~~

(b) If ~~such~~ *the* prisoner was in custody otherwise than as specified in ~~subsection 1 hereof:~~ *subdivision (a),* by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in the county jail not to exceed one year.

SEC. 491. Section 4573 of the Penal Code is amended to read:

4573. *(a)* Except when otherwise authorized by law, or when authorized by the person in charge of the prison or other institution referred to in this section or by an officer of the institution empowered by the person in charge of the institution to give the authorization, any person, who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state are located under the custody of prison officials, officers or employees, or into any county, city and county, or city jail, road camp, farm or other place where prisoners or inmates are located under custody of any sheriff, chief of police, peace officer, probation officer or employees, or within the grounds belonging to the institution, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming a controlled substance, is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

~~The~~

(b) The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 492. Section 4573.6 of the Penal Code is amended to read:

4573.6. *(a)* Any person who knowingly has in his or her possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the state are located under the custody of prison officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any jail, road camp, farm, place or institution, any controlled substances, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any device, contrivance, instrument,

or paraphernalia intended to be used for unlawfully injecting or consuming controlled substances, without being authorized to so possess the same by the rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm or place, is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

~~The~~

(b) The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 493. Section 4573.9 of the Penal Code is amended to read:

4573.9. *(a)* Notwithstanding any other provision of law, any person, other than a person held in custody, who sells, furnishes, administers, or gives away, or offers to sell, furnish, administer, or give away to any person held in custody in any state prison or other institution under the jurisdiction of the Department of Corrections, or in any prison camp, prison farm, or any other place where prisoners or inmates of these institutions are located under the custody of prison institution officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any other institution or place where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any institution or place, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, if the recipient is not authorized to possess the same by the rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm, or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, four, or six years.

~~The~~

(b) The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or ~~operatd~~ *operated* by, the state or any city, county, or city and county.

SEC. 494. Section 4574 of the Penal Code is amended to read:

4574. (a) Except when otherwise authorized by law, or when authorized by the person in charge of the prison or other institution referred to in this section or by an officer of the institution empowered by the person in charge of the institution to give such authorization, any person, who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison or prison road camp or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, or any jail or any county road camp in this state, or within the grounds belonging or adjacent to any such institution, any firearms, deadly weapons, or explosives, and any person who, while lawfully confined in a jail or county road camp possesses therein any firearm, deadly weapon, explosive, tear gas or tear gas weapon, is guilty of a felony and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(b) Except as provided in subdivision (a), any person who knowingly brings or sends into ~~such~~ *those* places any tear gas or tear gas weapons which results in the release of such tear gas or use of such weapon is guilty of a felony and punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(c) Except as provided in subdivision (a), any person who knowingly brings or sends into ~~such~~ *those* places any tear gas or tear gas weapons is guilty of a misdemeanor and punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

SEC. 495. Section 4600 of the Penal Code is amended to read:

4600. (a) Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a fine not exceeding ten thousand dollars ($10,000), and by imprisonment

~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* except that where the damage or injury to any city, city and county, or county jail property or prison property is determined to be nine hundred fifty dollars ($950) or less, that person is guilty of a misdemeanor.

(b) In any case in which a person is convicted of violating this section, the court may order the defendant to make restitution to the public entity that owns the property damaged by the defendant. The court shall specify in the order that the public entity that owns the property damaged by the defendant shall not enforce the order until the defendant satisfies all outstanding fines, penalties, assessments, restitution fines, and restitution orders.

SEC. 496. Section 11411 of the Penal Code is amended to read:

11411. (a) Any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifteen thousand dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(b) Any person who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property shall be punished by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both

the fine and imprisonment for the first conviction and by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(c) Any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another on two or more occasions, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or 3 years, by a fine not to exceed ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment. A violation of this subdivision shall not constitute felonious conduct for purposes of Section 186.22.

(d) Any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment for the first conviction and by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand

dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(e) As used in this section, "terrorize" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 497. Section 11413 of the Penal Code, as amended by Section 25 of Chapter 700 of the Statutes of 2004, is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, five, or seven years, and a fine not exceeding ten thousand dollars ($10,000).

(b) Subdivision (a) applies to the following places:

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, mosque, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place.

(5) Any bookstore or public or private library.

(6) Any building or facility designated as a courthouse.

(7) The home or office of a judicial officer.

(8) Any building or facility regularly occupied by county probation department personnel in which the employees perform official duties of the probation department.

(9) Any private property, if the property was targeted in whole or in part because of any of the actual or perceived characteristics of the owner or occupant of the property listed in subdivision (a) of Section 422.55.

(10) Any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.

(c) As used in this section, "judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(d) As used in this section, "terrorizing" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(e) Nothing in this section shall be construed to prohibit the prosecution of any person pursuant to Section 12303.3 or any other provision of law in lieu of prosecution pursuant to this section.

SEC. 498. Section 11413 of the Penal Code, as amended by Section 91 of Chapter 178 of the Statutes of 2010, is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, five, or seven years, and a fine not exceeding ten thousand dollars ($10,000).

(b) Subdivision (a) applies to the following places:

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, mosque, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place.

(5) Any bookstore or public or private library.

(6) Any building or facility designated as a courthouse.

(7) The home or office of a judicial officer.

(8) Any building or facility regularly occupied by county probation department personnel in which the employees perform official duties of the probation department.

(9) Any private property, if the property was targeted in whole or in part because of any of the actual or perceived characteristics of the owner or occupant of the property listed in subdivision (a) of Section 422.55.

(10) Any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.

(c) As used in this section, "judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(d) As used in this section, "terrorizing" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(e) Nothing in this section shall be construed to prohibit the prosecution of any person pursuant to Section 18740 or any other provision of law in lieu of prosecution pursuant to this section.

SEC. 499. Section 11418 of the Penal Code, as amended by Section 5 of Chapter 606 of the Statutes of 2002, is amended to read:

11418. (a) (1) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years.

(2) Any person who commits a violation of paragraph (1) and who has been previously convicted of Section 11411, 11412, 11413, 11418, 11418.1, 11418.5, 11419, 11460, 12303.1, 12303.2, or 12303.3 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 10, or 15 years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness or injury in human beings shall be punished by imprisonment in the state prison for life.

(2) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread great bodily injury or death and causes the death of any human being shall be punished by imprisonment in the state prison for life without the possibility of parole. Nothing in this paragraph shall prevent punishment instead under Section 190.2.

(3) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to or disruption of the food supply or "source of drinking water" as defined in subdivision (d) of Section 25249.11 of the Health and Safety Code shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(4) Any person who maliciously uses against animals, crops, or seed and seed stock, a weapon of mass destruction in a form that may cause widespread damage to or substantial diminution in the value of stock animals or crops, including seeds used for crops or product of the crops, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for ~~3, 4, or 6~~ *three, four, or six* years.

(d) (1) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(2) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (c) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, six, or nine years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 500. Section 11418 of the Penal Code, as amended by Section 92 of Chapter 178 of the Statutes of 2010, is amended to read:

11418. (a) (1) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years.

(2) Any person who commits a violation of paragraph (1) and who has been previously convicted of Section 11411, 11412, 11413, 11418, 11418.1, 11418.5, 11419, 11460, 18715, 18725, or 18740 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 10, or 15 years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness or injury in human beings shall be punished by imprisonment in the state prison for life.

(2) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread great bodily injury or death and causes the death of any human being shall be punished by imprisonment in the state prison for life without the possibility of parole. Nothing in this paragraph shall prevent punishment instead under Section 190.2.

(3) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to or disruption of the food supply or "source of drinking water" as defined in subdivision (d) of Section 25249.11 of the Health and Safety Code shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(4) Any person who maliciously uses against animals, crops, or seed and seed stock, a weapon of mass destruction in a form that may cause widespread damage to or substantial diminution in the value of stock animals or crops, including seeds used for crops or product of the crops, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 3, 4, or 6 years.

(d) (1) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(2) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (c) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, six, or nine years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 501. Section 11419 of the Penal Code is amended to read:

11419. (a) Any person or entity possessing any of the restricted biological agents enumerated in subdivision (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 4, 8, or 12 years, and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(b) For the purposes of this section, "restricted biological agents" means the following:

(1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern equine encephalitis virus, ebola viruses, equine morbilli virus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

(2) Bacteria: bacillus anthracis (commonly known as anthrax), brucella abortus, brucella melitensis, brucella suis, burkholderia (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei, clostridium botulinum, francisella tularensis, yersinia pestis (commonly known as plague).

(3) Rickettsiae: coxiella burnetii, rickettsia prowazekii, rickettsia rickettsii.

(4) Fungi: coccidioides immitis.

(5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin, saxitoxin, shigatoxin, staphylococcal enterotoxins, tabtoxin, tetrodotoxin, T-2 toxin.

(6) Any other microorganism, virus, infectious substance, or biological product that has the same characteristics as, or is substantially similar to, the substances prohibited in this section.

(c) (1) This section shall not apply to any physician, veterinarian, pharmacist, or licensed medical practitioner authorized to dispense a prescription under Section 11026 of the Health and Safety Code, or universities, research institutions, or pharmaceutical corporations, or any person possessing the agents pursuant to a lawful prescription issued by a person defined in Section 11026 of the Health and Safety Code, if the person possesses vaccine strains of the viral agents Junin virus strain #1, Rift Valley fever virus strain MP-12, Venezuelan equine encephalitis virus strain TC-83 and yellow fever virus strain 17-D; any vaccine strain described in Section 78.1 of Subpart A of Part 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions, and any toxin for medical use, inactivated for use as vaccines, or toxin preparation for biomedical research use at a median lethal dose for vertebrates of more than 100 ng/kg, as well as any national standard toxin required for biologic potency testing as described in Part 113

(commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions.

(2) For the purposes of this section, no person shall be deemed to be in possession of an agent if the person is naturally exposed to, or innocently infected or contaminated with, the agent.

(d) Any peace officer who encounters any of the restricted agents mentioned above shall immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 501.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or 2 or 3 years*.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of

subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the

petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) (i) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

(ii) In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) (i) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

(ii) In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of

firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code,

a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency’s disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 502. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or two or three years*. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous

conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Carjacking.

(29) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony *punishable by imprisonment in the state prison for 16 months, or two or three years*. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 503. Section 12021.5 of the Penal Code, as amended by Section 11 of Chapter 256 of the Statutes of 2010, is amended to read:

12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of

the felony or attempted felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years. The court shall select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of sentence, in accordance with the provisions of subdivision (d) of Section 1170.1.

(b) Every person who carries a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years. The court shall select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of sentence, in accordance with the provisions of subdivision (d) of Section 1170.1.

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

(1) "Detachable magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a rifle that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a rifle that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a rifle that is designed or redesigned to fire ammunition.

(2) "Detachable pistol magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire ammunition.

(3) "Detachable shotgun magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth or rifled bore.

(B) To be attached to, and detached from, a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth bore.

(C) To feed fixed shotgun shells continuously and directly into the loading mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.

(4) "Belt-feeding device" means a device that is designed or redesigned to continuously feed ammunition into the loading mechanism of a machinegun or a semiautomatic firearm.

(5) "Rifle" shall have the same meaning as specified in paragraph (20) of subdivision (c) of Section 12020.

(6) "Shotgun" shall have the same meaning as specified in paragraph (21) of subdivision (c) of Section 12020.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 504. Section 12021.5 of the Penal Code, as amended by Section 12 of Chapter 256 of the Statutes of 2010, is amended to read:

12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(b) Every person who carries a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or

attempted felony, be punished by an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

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

(1) "Detachable magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a rifle that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a rifle that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a rifle that is designed or redesigned to fire ammunition.

(2) "Detachable pistol magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire ammunition.

(3) "Detachable shotgun magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth or rifled bore.

(B) To be attached to, and detached from, a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth bore.

(C) To feed fixed shotgun shells continuously and directly into the loading mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.

(4) "Belt-feeding device" means a device that is designed or redesigned to continuously feed ammunition into the loading mechanism of a machinegun or a semiautomatic firearm.

(5) "Rifle" shall have the same meaning as specified in paragraph (20) of subdivision (c) of Section 12020.

(6) "Shotgun" shall have the same meaning as specified in paragraph (21) of subdivision (c) of Section 12020.

(d) This section shall become operative on January 1, 2012.

SEC. 505. Section 12022 of the Penal Code, as amended by Section 3 of Chapter 494 of the Statutes of 2004, is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in ~~the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year, unless the arming is an element of that offense. This additional term shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, or a .50 BMG rifle, as defined in Section 12278, the additional and consecutive term described in this subdivision shall be *imprisonment pursuant to subdivision (h) of Section 1170 for* three years whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon or machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be

imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 506. Section 12022 of the Penal Code, as added by Section 5 of Chapter 711 of the Statutes of 2010, is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year, unless the arming is an element of that offense. This additional term shall apply to any

person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 30510 or Section 30515, or a machinegun, as defined in Section 16880, or a .50 BMG rifle, as defined in Section 30530, the additional and consecutive term described in this subdivision shall be three years*imprisonment pursuant to subdivision (h) of Section 1170* whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon or machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be *pursuant to subdivision (h) of Section 1170 for* one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment

~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 507. Section 12022.5 of the Penal Code, as amended by Section 4 of Chapter 494 of the Statutes of 2004, is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 6, or 10 years.

(c) Notwithstanding Section 1385 or any other provisions of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a

firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 508. Section 12022.5 of the Penal Code, as added by Section 5 of Chapter 711 of the Statutes of 2010, is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 30510 or Section 30515, or a machinegun, as defined in Section 16880, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 5, 6, or 10 years.

(c) Notwithstanding Section 1385 or any other provisions of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 509. Section 12022.9 of the Penal Code, as amended by Section 7 of Chapter 126 of the Statutes of 2002, is amended to read:

12022.9. Any person who, during the commission of a felony or attempted felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five years. The additional term provided in this subdivision shall not be imposed unless the fact of that injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187.

SEC. 510. Section 12022.9 of the Penal Code, as added by Section 5 of Chapter 711 of the Statutes of 2010, is amended to read:

12022.9. Any person who, during the commission of a felony or attempted felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional and consecutive term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for five years. The additional term provided in this subdivision shall not be imposed unless the fact of that injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187.

SEC. 511. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony *punishable by imprisonment pursuant to subdivision (h) of Section 1170*.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed

one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the

execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

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

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

SEC. 512. Section 12035 of the Penal Code is amended to read:

12035. (a) As used in this section, the following definitions apply:

(1) "Locking device" means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) "Loaded firearm" has the same meaning as set forth in subdivision (g) of Section 12031.

(3) "Child" means a person under 18 years of age.

(4) "Great bodily injury" has the same meaning as set forth in Section 12022.7.

(5) "Locked container" has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) (1) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the first degree" if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.

(2) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the second degree" if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

(1) The child obtains the firearm as a result of an illegal entry to any premises by any person.

(2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The firearm is carried on the person or within such a close proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.

(4) The firearm is locked with a locking device that has rendered the firearm inoperable.

(5) The person is a peace officer or a member of the armed forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.

(7) The person who keeps a loaded firearm on any premise that is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(d) Criminal storage of a firearm is punishable as follows:

(1) Criminal storage of a firearm in the first degree, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) Criminal storage of a firearm in the second degree, by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute an alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting

prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a loaded firearm.

SEC. 513. Section 12040 of the Penal Code is amended to read:

12040. (a) A person commits criminal possession of a firearm when he or she carries a firearm in a public place or on any public street while masked so as to hide his or her identity.

(b) Criminal possession of a firearm is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by imprisonment in a county jail not to exceed one year.

(c) Subdivision (a) shall not apply to the following:

(1) A peace officer who is in the performance of his or her duties.

(2) Full-time paid peace officers of other states and the federal government who are carrying out official duties while in this state.

(3) Any person summoned by any of the officers enumerated in paragraph (1) or (2) to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.

(4) The possession of an unloaded firearm or a firearm loaded with blank ammunition by an authorized participant in, or while

rehearsing for, a motion picture, television, video production, entertainment event, entertainment activity, or lawfully organized and conducted activity when the participant lawfully uses the firearm as part of that production, event, or activity.

(5) The possession of a firearm by a licensed hunter while actually engaged in lawful hunting, or while going directly to or returning directly from the hunting expedition.

SEC. 514. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(8) No person shall sell or otherwise transfer his or her ownership in a handgun unless the firearm bears either:

(A) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(B) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(9) (A) No person shall make an application to purchase more than one handgun within any 30-day period.

(B) Subparagraph (A) shall not apply to any of the following:

(i) Any law enforcement agency.

(ii) Any agency duly authorized to perform law enforcement duties.

(iii) Any state or local correctional facility.

(iv) Any private security company licensed to do business in California.

(v) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of his or her employment as a peace officer.

(vi) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(vii) Any person who may, pursuant to Section 12078, claim an exemption from the waiting period set forth in subdivision (c) of this section.

(viii) Any transaction conducted through a licensed firearms dealer pursuant to Section 12082.

(ix) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto

and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

(x) The exchange of a handgun where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(xi) The replacement of a handgun when the person's handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which he or she resides.

(xii) The return of any handgun to its owner.

(xiii) Community colleges that are certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission-certified law enforcement training.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a handgun to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(5) (A) Commencing April 1, 1994, and until January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the handgun presents a handgun safety certificate to the dealer.

(6) No handgun shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun and that the previous application to purchase involved none of the entities specified in subparagraph (B) of paragraph (9) of subdivision (a).

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer pursuant to Section 12082.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for a basic firearms safety certificate or a handgun safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Using or allowing another to use one's identification, proof of residency, or thumbprint.

(7) Allowing others to give unauthorized assistance during the examination.

(8) Reference to unauthorized materials during the examination and cheating by the applicant.

(9) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as authorized by the department.

(f) (1) (A) Commencing July 1, 2008, a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code may not deliver, sell, or transfer a firearm to a person in California who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the

United States Code unless, prior to delivery, the person intending to deliver, sell, or transfer the firearm obtains a verification number via the Internet for the intended delivery, sale, or transfer, from the department. If Internet service is unavailable to either the department or the licensee due to a technical or other malfunction, or a federal firearms licensee who is located outside of California does not possess a computer or have Internet access, alternate means of communication, including facsimile or telephone, shall be made available for a licensee to obtain a verification number in order to comply with this section.

(B) For every verification number request received pursuant to this section, the department shall determine whether the intended recipient is on the centralized list of firearms dealers pursuant to this section, or the centralized list of exempted federal firearms licensees pursuant to subdivision (a) of Section 12083, or the centralized list of firearms manufacturers pursuant to subdivision (f) of Section 12086.

(C) If the department finds after the reviews specified in subparagraph (B) that the intended recipient is authorized to receive the firearm shipment, the department shall issue to the inquiring party a unique verification number for the intended delivery, sale, or transfer. One verification number shall be issued for each delivery, sale, or transfer, which may involve multiple firearms. In addition to the unique verification number, the department may provide to the inquiring party information necessary for determining the eligibility of the intended recipient to receive the firearm. The person intending to deliver, sell, or transfer the firearm shall provide the unique verification number to the recipient along with the firearm upon delivery, in a manner to be determined by the department.

(D) If the department finds after the reviews specified in subparagraph (B) that the intended recipient is not authorized to receive the firearm shipment, the department shall notify the inquiring party that the intended recipient is ineligible to receive the shipment.

(E) The department shall prescribe the manner in which the verification numbers may be requested via the Internet, or by alternate means of communication, such as by facsimile or telephone, including all required enrollment information and procedures.

(2) (A) On or after January 1, 1998, within 60 days of bringing a handgun into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the handgun pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a handgun to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the handgun should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a handgun that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a handgun after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2), (3), or (5), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating the provisions, other than paragraph (9) of subdivision (a), of this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a handgun to a minor.

(C) A violation of subdivision (b) involving the delivery of a handgun.

(D) A violation of paragraph (1), (3), (4), (5), or (6) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a handgun.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision*

(h) of Section 1170 for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(5) (A) A first violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of fifty dollars ($50).

(B) A second violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100).

(C) A third or subsequent violation of paragraph (9) of subdivision (a) is a misdemeanor.

(D) For purposes of this paragraph each application to purchase a handgun in violation of paragraph (9) of subdivision (a) shall be deemed a separate offense.

SEC. 515. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register

in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor, provided however, that any person who is prohibited from obtaining a firearm pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code who knowingly furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided for the register shall be punished by imprisonment in a county jail not exceeding one year or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of 8, 12, or 18 months.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is a private party transfer conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller or purchaser by the dealer, upon request. The dealer shall redact all of the purchaser's personal information, as required pursuant to paragraph (1) of subdivision (b) and paragraph (1) of subdivision (c) of Section 12077, from the seller's copy, and the seller's personal information from the purchaser's copy.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor, provided however, that any person who is prohibited from obtaining a firearm pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code who knowingly furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided for the register shall be punished by imprisonment in a county jail not exceeding one year or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of 8, 12, or 18 months.

(2) The record of applicant information shall be transmitted to the Department of Justice by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is a private party transfer conducted pursuant to Section 12082, a copy shall be provided to the seller

or purchaser by the dealer, upon request. The dealer shall redact all of the purchaser's personal information, as required pursuant to paragraph (1) of subdivision (b) and paragraph (1) of subdivision (c) of Section 12077, from the seller's copy, and the seller's personal information from the purchaser's copy.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department,

the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. The fee shall be no more than is necessary to fund the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(10) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification

provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of

subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

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

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 516. Section 12090 of the Penal Code is amended to read:

12090. Any person who changes, alters, removes or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make such change, alteration or removal shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 517. Section 12101 of the Penal Code is amended to read:

12101. (a) (1) A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor is accompanied by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves this use of a firearm.

(B) The minor is accompanied by a responsible adult, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The minor is at least 16 years of age, the minor has the prior written consent of his or her parent or legal guardian and the minor is actively engaged in, or is in direct transit to or from, a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The minor has the prior written consent of his or her parent or legal guardian, the minor is on lands owned or lawfully possessed by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful,

recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(b) (1) A minor shall not possess live ammunition.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor has the written consent of his or her parent or legal guardian to possess live ammunition.

(B) The minor is accompanied by his or her parent or legal guardian.

(C) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(c) Every minor who violates this section shall be punished as follows:

(1) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail if one of the following applies:

(A) The minor has been found guilty previously of violating this section.

(B) The minor has been found guilty previously of an offense specified in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560.

(C) The minor has been found guilty of a violation of paragraph (1) of subdivision (a).

(2) Violations of this section other than those violations specified in paragraph (1) shall be punishable as a misdemeanor.

(d) In a proceeding to enforce this section brought pursuant to Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of the Welfare and Institutions Code, the court may require the custodial parent or legal guardian of a minor who violates this section to participate in classes on parenting education that meet the requirements established in Section 16507.7 of the Welfare and Institutions Code.

(e) As used in this section, “responsible adult” means a person at least 21 years of age who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(f) It is not the intent of the Legislature in enacting the amendments to this section or to Section 12078 to expand or narrow the application of current statutory or judicial authority as to the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

SEC. 518. Section 12220 of the Penal Code is amended to read:

12220. (a) Any person, firm, or corporation, who within this state possesses or knowingly transports a machinegun, except as authorized by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

(b) Any person, firm, or corporation who within this state intentionally converts a firearm into a machinegun, or who sells, or offers for sale, or knowingly manufactures a machinegun, except as authorized by this chapter, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for four, six, or eight years.

SEC. 519. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in violation of paragraph (1) shall receive an enhancement of one year *in a county jail*.

(3) Except in the case of a first violation involving not more than two firearms as provided in subdivisions (b) and (c), for purposes of this section, if more than one assault weapon or .50 BMG rifle is involved in any violation of this section, there shall be a distinct and separate offense for each.

(b) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500) if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(4) The person relinquished the firearm pursuant to Section 12288, in which case the assault weapon shall be destroyed pursuant to Section 12028.

(c) Any person who, within this state, possesses any .50 BMG rifle, except as provided in this chapter, shall be punished by a fine of one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500) if the person was found in possession of no more than two firearms in compliance with subdivision (a) of Section 12285 and the person meets the conditions set forth in paragraphs (1), (2), and (3):

(1) The person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period established pursuant to subdivision (a) of Section 12285.

(4) Firearms seized pursuant to this subdivision from persons who meet all of the conditions set forth in paragraphs (1), (2), and

(3) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions set forth in paragraphs (1), (2), and (3) shall be destroyed pursuant to Section 12028.

(d) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a), (b), and (c) shall not apply to the sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f) (1) Subdivisions (b) and (c) shall not prohibit the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a), (b), and (c) shall not prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in subdivision (e) if the peace officer is authorized by his or her employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002, and in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not

later than 90 days after possession or receipt. In the case of a peace officer who possesses or receives a .50 BMG rifle on or before January 1, 2005, the officer shall register the .50 BMG rifle on or before April 30, 2006. In the case of a peace officer who possesses or receives a .50 BMG rifle after January 1, 2005, the officer shall register the .50 BMG rifle not later than one year after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon or .50 BMG rifle.

(g) Subdivision (b) shall not apply to the possession of an assault weapon during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a), (b), and (c) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons or .50 BMG rifles for sale to the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) that is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(j) Subdivisions (b) and (c) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) if the assault weapon or .50 BMG rifle is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(k) Subdivision (a) shall not apply to either of the following:

(1) A person who lawfully possesses and has registered an assault weapon or .50 BMG rifle pursuant to this chapter who lends that assault weapon or .50 BMG rifle to another if all the following apply:

(A) The person to whom the assault weapon or .50 BMG rifle is lent is 18 years of age or over and is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(B) The person to whom the assault weapon or .50 BMG rifle is lent remains in the presence of the registered possessor of the assault weapon or .50 BMG rifle.

(C) The assault weapon or .50 BMG rifle is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon or .50 BMG rifle to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(*l*) Subdivisions (b) and (c) shall not apply to the possession of an assault weapon or .50 BMG rifle by a person to whom an assault weapon or .50 BMG rifle is lent pursuant to subdivision (k).

(m) Subdivisions (a), (b), and (c) shall not apply to the possession and importation of an assault weapon or a .50 BMG rifle into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon or a .50 BMG rifle.

(2) The competition or match is conducted on the premises of one of the following:

(A) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(B) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon or .50 BMG rifle is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivisions (b) and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286 or 12287.

(2) A person who has a permit to possess an assault weapon or a .50 BMG rifle issued pursuant to Section 12286 or 12287 when he or she is acting in accordance with Section 12285, 12286, or 12287.

(o) Subdivisions (a), (b), and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286, 12287, or 12290.

(p) Subdivisions (b) and (c) shall not apply to the registered owner of an assault weapon or a .50 BMG rifle possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon or a .50 BMG rifle by the registered owner of that assault weapon or a .50 BMG rifle if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivision (a) shall not apply during the first 180 days of the 2005 calendar year to the importation into this state of a .50 BMG rifle by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006, if all of the following are applicable:

(1) The person is eligible under this chapter to register that .50 BMG rifle.

(2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(3) The person is otherwise in compliance with this chapter.

(t) Subdivisions (a), (b), and (c) shall not apply to the sale of assault weapons or .50 BMG rifles by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Federal military and law enforcement agencies.

(4) Law enforcement and military agencies of other states.

(5) Foreign governments and agencies approved by the United States State Department.

(6) Officers described in subdivision (f) who are authorized to possess assault weapons or .50 BMG rifles pursuant to subdivision (f).

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 520. Section 12281 of the Penal Code is amended to read:

12281. (a) Any person who, or firm, company, or corporation that, operated a retail or other commercial firm, company, or corporation, and manufactured, distributed, transported, imported, possessed, possessed for sale, offered for sale, or transferred, for commercial purpose, an SKS rifle in California between January 1, 1992, and December 19, 1997, shall be immune from criminal prosecution under Section 12280. The immunity provided in this subdivision shall apply retroactively to any person who, or firm, company, or corporation that, is or was charged by complaint or indictment with a violation of Section 12280 for conduct related to an SKS rifle, whether or not the case of that person, firm, company, or corporation is final.

(b) Any person who possessed, gave, loaned, or transferred an SKS rifle in California between January 1, 1992, and December 19, 1997, shall be immune from criminal prosecution under Section 12280. The immunity provided in this subdivision shall apply retroactively to any person who was charged by complaint or indictment with a violation of Section 12280 for conduct related to an SKS rifle, whether or not the case of that person is final.

(c) Any SKS rifle in the possession of any person who, or firm, company, or corporation that, is described in subdivision (a) or (b), shall not be subject to seizure by law enforcement for violation of Section 12280 prior to January 1, 2000.

(d) Any person, firm, company, or corporation, convicted under Section 12280 for conduct relating to an SKS rifle, shall be permitted to withdraw his or her plea of guilty or nolo contendere, or to reopen his or her case and assert the immunities provided in this section, if the court determines that the allowance of the immunity is in the interests of justice. The court shall interpret this section liberally to the benefit of the defendant.

(e) The Department of Justice shall notify all district attorneys on or before January 31, 1999, of the provisions of this section. The department shall identify all criminal prosecutions in the state

for conduct related to SKS rifles within 90 days of the effective date of this section. In all cases so identified by the Attorney General, the district attorneys shall inform defense counsel, or the defendant if the defendant is in propria persona, in writing, of the provisions of this section within 120 days of the effective date of this section.

(f) (1) Any person, firm, company, or corporation that is in possession of an SKS rifle shall do one of the following on or before January 1, 2000:

(A) Relinquish the SKS rifle to the Department of Justice pursuant to subdivision (h).

(B) Relinquish the SKS rifle to a law enforcement agency pursuant to Section 12288.

(C) Dispose of the SKS rifle as permitted by Section 12285.

(2) Any person who has obtained title to an SKS rifle by bequest or intestate succession shall be required to comply with subparagraph (A) or (B) of paragraph (1) of this subdivision unless he or she otherwise complies with paragraph (1) of subdivision (b) of Section 12285.

(3) Any SKS rifle relinquished to the department pursuant to this subdivision shall be in a manner prescribed by the department.

(4) The department shall conduct a public education and notification program as described in Section 12289, commencing no later than January 1, 1999.

(g) Any person who complies with subdivision (f) shall be exempt from the prohibitions set forth in subdivision (a) or (b) of Section 12280 for those acts by that person associated with complying with the requirements of subdivision (f).

(h) (1) The department shall purchase any SKS rifle relinquished pursuant to subdivision (f) from funds appropriated for this purpose by the act amending this section in the 1997–98 Regular Session of the Legislature or by subsequent budget acts or other legislation. The department shall adopt regulations for this purchase program that include, but are not limited to, the manner of delivery, the reimbursement to be paid, and the manner in which persons shall be informed of the state purchase program.

(2) Any person who relinquished possession of an SKS rifle to a law enforcement agency pursuant to Section 12288 prior to the effective date of the purchase program set forth in paragraph (1) shall be eligible to be reimbursed from the purchase program. The

procedures for reimbursement pursuant to this paragraph shall be part of the regulations adopted by the department pursuant to paragraph (1).

(i) Notwithstanding paragraph (11) of subdivision (a) of Section 12276, an "SKS rifle" under this section means all SKS rifles commonly referred to as "SKS Sporter" versions, manufactured to accept a detachable AK-47 magazine and imported into this state and sold by a licensed gun dealer, or otherwise lawfully possessed in this state by a resident of this state who is not a licensed gun dealer, between January 1, 1992, and December 19, 1997.

(j) Failure to comply with subdivision (f) is a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or in a county jail, not exceeding one year.

(k) In addition to the regulations required pursuant to subdivision (h), emergency regulations for the purchase program described in subdivision (h) shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 521. Section 12303.3 of the Penal Code is amended to read:

12303.3. Every person who possesses, explodes, ignites, or attempts to explode or ignite any destructive device or any explosive with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a period of three, five, or seven years.

SEC. 522. Section 12303.6 of the Penal Code is amended to read:

12303.6. Any person, firm, or corporation who, within this state, sells, offers for sale, or knowingly transports any destructive device, other than fixed ammunition of a caliber greater than .60 caliber, except as provided by this chapter, is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three or four years.

SEC. 523. Section 12304 of the Penal Code is amended to read:

12304. Any person, firm or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any fixed ammunition of a caliber greater than .60 caliber, except as provided in this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the county jail for a term not to exceed six months or by a fine not to exceed one thousand dollars ($1,000), or by both ~~such~~ *that* fine and imprisonment.

A second or subsequent conviction shall be punished by imprisonment in the county jail for a term not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed three thousand dollars ($3,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 524. Section 12312 of the Penal Code is amended to read:

12312. Every person who possesses any substance, material, or any combination of substances or materials, with the intent to make any destructive device or any explosive without first obtaining a valid permit to make such destructive device or explosive, is guilty of a felony, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

SEC. 525. Section 12320 of the Penal Code is amended to read:

12320. Any person, firm, or corporation who, within this state knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail for a term not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 526. Section 12355 of the Penal Code is amended to read:

12355. (a) Except as provided in Chapter 2.5 (commencing with Section 12301), any person who assembles, maintains, places, or causes to be placed a boobytrap device as described in subdivision (c) is guilty of a felony punishable by imprisonment ~~in the state prison~~*pursuant to subdivision (h) of Section 1170* for two, three, or five years.

(b) Possession of any device with the intent to use the device as a boobytrap is punishable by imprisonment ~~in state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(c) For purposes of this section, "boobytrap" means any concealed or camouflaged device designed to cause great bodily injury when triggered by an action of any unsuspecting person coming across the device. Boobytraps may include, but are not limited to, guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wire with hooks attached.

SEC. 527. Section 12370 of the Penal Code is amended to read:

12370. (a) A person who has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5, under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in subdivision (f), except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(b) A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition with the chief of police or county sheriff of the jurisdiction in which he or she seeks to possess and use the body armor for an exception to this prohibition. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as he or she deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise

broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on his or her person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

(e) For purposes of this section only, "violent felony" refers to the specific crimes listed in subdivision (c) of Section 667.5, and to crimes defined under the applicable laws of the United States or any other state, government, or country that are reasonably equivalent to the crimes listed in subdivision (c) of Section 667.5.

(f) For purposes of this section, "body armor" means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

SEC. 528. Section 12403.7 of the Penal Code is amended to read:

12403.7. Notwithstanding any other law, any person may purchase, possess, or use tear gas and tear gas weapons for the projection or release of tear gas if the tear gas and tear gas weapons are used solely for self-defense purposes, subject to the following requirements:

(a) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country or convicted of misuse of tear gas under subdivision (g) shall purchase, possess, or use tear gas or tear gas weapons.

(b) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas or tear gas weapons.

(c) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(d) No person who is a minor shall purchase, possess, or use tear gas or tear gas weapons.

(e) (1) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that contains more than 2.5 ounces net weight of aerosol spray.

(2) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: "WARNING: The use of this substance or device for any purpose other than self-defense is a crime under the law. The contents are dangerous—use with care."

(3) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that discloses the date on which the useful life of the tear gas weapon expires.

(4) Every tear gas container and tear gas weapon that may be lawfully purchased pursuant to this section shall be accompanied at the time of purchase by printed instructions for use.

(f) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

(g) Any person who uses tear gas or tear gas weapons except in self-defense is guilty of a public offense and is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment, except that, if the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of his or her official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for 16

months or two or three years or by a fine of one thousand dollars ($1,000), or by both the fine and imprisonment.

SEC. 529. Section 12422 of the Penal Code is amended to read:

12422. Any person who changes, alters, removes or obliterates the name of the manufacturer, the serial number or any other mark of identification on any tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine of not more than two thousand dollars ($2,000) or by both.

Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same.

SEC. 530. Section 12520 of the Penal Code is amended to read:

12520. Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not to exceed ten thousand dollars ($10,000) or by both.

SEC. 531. Section 18715 of the Penal Code is amended to read:

18715. (a) Every person who recklessly or maliciously has in possession any destructive device or any explosive in any of the following places is guilty of a felony:

(1) On a public street or highway.

(2) In or near any theater, hall, school, college, church, hotel, or other public building.

(3) In or near any private habitation.

(4) In, on, or near any aircraft, railway passenger train, car, cable road, cable car, or vessel engaged in carrying passengers for hire.

(5) In, on, or near any other public place ordinarily passed by human beings.

(b) An offense under subdivision (a) is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a period of two, four, or six years.

SEC. 532. Section 18720 of the Penal Code is amended to read:

18720. Every person who possesses any substance, material, or any combination of substances or materials, with the intent to make any destructive device or any explosive without first obtaining a valid permit to make that destructive device or explosive, is guilty of a felony, and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

SEC. 533. Section 18725 of the Penal Code is amended to read:

18725. Every person who willfully does any of the following is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, four, or six years:

(a) Carries any destructive device or any explosive on any vessel, aircraft, car, or other vehicle that transports passengers for hire.

(b) While on board any vessel, aircraft, car, or other vehicle that transports passengers for hire, places or carries any destructive device or any explosive in any hand baggage, roll, or other container.

(c) Places any destructive device or any explosive in any baggage that is later checked with any common carrier.

SEC. 534. Section 18730 of the Penal Code is amended to read:

18730. Except as provided by this chapter, any person, firm, or corporation who, within this state, sells, offers for sale, or knowingly transports any destructive device, other than fixed ammunition of a caliber greater than .60 caliber, is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

SEC. 535. Section 18735 of the Penal Code is amended to read:

18735. (a) Except as provided by this chapter, any person, firm, or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any fixed ammunition of a caliber greater than .60 caliber is guilty of a public offense.

(b) Upon conviction of an offense under subdivision (a), a person, firm, or corporation shall be punished by imprisonment in the county jail for a term not to exceed six months or by a fine not

to exceed one thousand dollars ($1,000), or by both this fine and imprisonment.

(c) A second or subsequent conviction shall be punished by imprisonment in the county jail for a term not to exceed one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or by a fine not to exceed three thousand dollars ($3,000), or by both this fine and imprisonment.

SEC. 536. Section 18740 of the Penal Code is amended to read:

18740. Every person who possesses, explodes, ignites, or attempts to explode or ignite any destructive device or any explosive with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a felony, and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a period of three, five, or seven years.

SEC. 537. Section 20110 of the Penal Code is amended to read:

20110. (a) Except as provided in Chapter 1 (commencing with Section 18710) of Division 5 of Title 2, any person who assembles, maintains, places, or causes to be placed a boobytrap device is guilty of a felony punishable by imprisonment in ~~the state prison~~ *a county jail* for two, three, or five years.

(b) Possession of any device with the intent to use the device as a boobytrap is punishable by imprisonment ~~in state prison~~ *pursuant to subdivision (h) of Section 1170,* or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

SEC. 538. Section 22810 of the Penal Code is amended to read:

22810. Notwithstanding any other provision of law, any person may purchase, possess, or use tear gas or any tear gas weapon for the projection or release of tear gas if the tear gas or tear gas weapon is used solely for self-defense purposes, subject to the following requirements:

(a) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country, or convicted of misuse of tear gas under subdivision (g), shall purchase, possess, or use tear gas or any tear gas weapon.

(b) No person addicted to any narcotic drug shall purchase, possess, or use tear gas or any tear gas weapon.

(c) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(d) No minor shall purchase, possess, or use tear gas or any tear gas weapon.

(e) (1) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that contains more than 2.5 ounces net weight of aerosol spray.

(2) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: "WARNING: The use of this substance or device for any purpose other than self-defense is a crime under the law. The contents are dangerous — use with care."

(3) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that discloses the date on which the useful life of the tear gas weapon expires.

(4) Every tear gas container and tear gas weapon that may be lawfully purchased pursuant to this section shall be accompanied at the time of purchase by printed instructions for use.

(f) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

(g) (1) Except as provided in paragraph (2), any person who uses tear gas or any tear gas weapon except in self-defense is guilty of a public offense and is punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(2) If the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment ~~in a state~~

~~prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months or two or three years or by a fine of one thousand dollars ($1,000), or by both the fine and imprisonment.

SEC. 539. Section 22910 of the Penal Code is amended to read:

22910. (a) Any person who changes, alters, removes, or obliterates the name of the manufacturer, the serial number, or any other mark of identification on any tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine of not more than two thousand dollars ($2,000), or by both that fine and imprisonment.

(b) Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same.

SEC. 540. Section 23900 of the Penal Code is amended to read:

23900. Any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

SEC. 541. Section 25110 of the Penal Code is amended to read:

25110. (a) Criminal storage of a firearm in the first degree is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Criminal storage of a firearm in the second degree is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 542. Section 25300 of the Penal Code is amended to read:

25300. (a) A person commits criminal possession of a firearm when the person carries a firearm in a public place or on any public street while masked so as to hide the person's identity.

(b) Criminal possession of a firearm is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by imprisonment in a county jail not to exceed one year.

(c) Subdivision (a) does not apply to any of the following:

(1) A peace officer in performance of the officer's duties.

(2) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state.

(3) Any person summoned by any of the officers enumerated in paragraph (1) or (2) to assist in making an arrest or preserving the peace while that person is actually engaged in assisting that officer.

(4) The possession of an unloaded firearm or a firearm loaded with blank ammunition by an authorized participant in, or while rehearsing for, a motion picture, television, video production, entertainment event, entertainment activity, or lawfully organized and conducted activity when the participant lawfully uses the firearm as part of that production, event, or activity.

(5) The possession of a firearm by a licensed hunter while actually engaged in lawful hunting, or while going directly to or returning directly from the hunting expedition.

SEC. 543. Section 25400 of the Penal Code is amended to read:

25400. (a) A person is guilty of carrying a concealed firearm when the person does any of the following:

(1) Carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) A firearm carried openly in a belt holster is not concealed within the meaning of this section.

(c) Carrying a concealed firearm in violation of this section is punishable as follows:

(1) If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) If both of the following conditions are met, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one

year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (c) is met.

SEC. 544. Section 25850 of the Penal Code is amended to read:

25850. (a) A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(b) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(c) Carrying a loaded firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) Where the person is not listed with the Department of Justice pursuant to Section 11106 as the registered owner of the handgun, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, as a misdemeanor, punishable by imprisonment in

a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 23515, or of any crime made punishable under a provision listed in Section 16580, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned for a period of at least three months.

(2) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this section or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this section, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) A violation of this section that is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(f) Nothing in this section, or in Article 3 (commencing with Section 25900) or Article 4 (commencing with Section 26000), shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(g) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(1) When the person arrested has violated this section, although not in the officer's presence.

(2) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(h) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c), if the peace officer has probable cause to believe that the person is carrying a handgun in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that handgun.

SEC. 545. Section 27590 of the Penal Code is amended to read:

27590. (a) Except as provided in subdivision (b), (c), or (e), a violation of this article is a misdemeanor.

(b) If any of the following circumstances apply, a violation of this article is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years.

(1) If the violation is of subdivision (a) of Section 27500.

(2) If the defendant has a prior conviction of violating the provisions, other than Section 27535, of this article or former Section 12100 of this code, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, or Section 8101 of the Welfare and Institutions Code.

(3) If the defendant has a prior conviction of violating any offense specified in Section 29905 or of a violation of Section 32625 or 33410, or of former Section 12560, as that section read at any time from when it was enacted by Section 4 of Chapter 931 of the Statutes of 1965 to when it was repealed by Section 14 of Chapter 9 of the Statutes of 1990, or of any provision listed in Section 16590.

(4) If the defendant is in a prohibited class described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) A violation of this article by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(6) A violation of Section 27510 involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(c) If any of the following circumstances apply, a violation of this article shall be punished by imprisonment in a county jail not

exceeding one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(1) A violation of Section 27515, 27520, or subdivision (b) of Section 27500.

(2) A violation of Section 27505 involving the sale, loan, or transfer of a handgun to a minor.

(3) A violation of Section 27510 involving the delivery of a handgun.

(4) A violation of subdivision (a), (c), (d), (e), or (f) of Section 27540 involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(5) A violation of Section 27545 involving a handgun.

(6) A violation of Section 27550.

(d) If both of the following circumstances apply, an additional term of imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(1) A violation of Section 27510 or subdivision (b) of Section 27500.

(2) The firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(e) (1) A first violation of Section 27535 is an infraction punishable by a fine of fifty dollars ($50).

(2) A second violation of Section 27535 is an infraction punishable by a fine of one hundred dollars ($100).

(3) A third or subsequent violation of Section 27535 is a misdemeanor.

(4) For purposes of this subdivision each application to purchase a handgun in violation of Section 27535 shall be deemed a separate offense.

SEC. 546. Section 28250 of the Penal Code is amended to read:

28250. (a) Any person who does any of the following is guilty of a misdemeanor:

(1) Furnishing a fictitious name or address for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

(2) Knowingly furnishing any incorrect information for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

(3) Knowingly omitting any information required to be provided for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

(4) Violating any provision of this article.

(b) Notwithstanding subdivision (a), any person who is prohibited from obtaining a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, who does any of the following shall be punished by imprisonment in a county jail not exceeding one year or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for a term of 8, 12, or 18 months:

(1) Knowingly furnishes a fictitious name or address for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

(2) Knowingly furnishes any incorrect information for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

(3) Knowingly omits any information required to be provided for the register under Section 28210 or the electronic or telephonic transfer under Section 28215.

SEC. 547. Section 29700 of the Penal Code is amended to read:

29700. Every minor who violates this chapter shall be punished as follows:

(a) By imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or in a county jail if one of the following applies:

(1) The minor has been found guilty previously of violating this chapter.

(2) The minor has been found guilty previously of an offense specified in Section 29905, 32625, or 33410, or an offense specified in any provision listed in Section 16590.

(3) The minor has been found guilty of a violation of Section 29610.

(b) Violations of this chapter other than those violations specified in subdivision (a) shall be punishable as a misdemeanor.

SEC. 548. Section 30315 of the Penal Code is amended to read:

30315. Any person, firm, or corporation who, within this state knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county jail for a term not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment.

SEC. 549. Section 30600 of the Penal Code is amended to read:

30600. (a) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for four, six, or eight years.

(b) In addition and consecutive to the punishment imposed under subdivision (a), any person who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in violation of subdivision (a) shall receive an enhancement of *imprisonment pursuant to subdivision (h) of Section 1170 of* one year.

(c) Except in the case of a first violation involving not more than two firearms as provided in Sections 30605 and 30610, for purposes of this article, if more than one assault weapon or .50 BMG rifle is involved in any violation of this article, there shall be a distinct and separate offense for each.

SEC. 550. Section 30605 of the Penal Code is amended to read:

30605. (a) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*.

(b) Notwithstanding subdivision (a), a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500) if the person was found in possession of no more

than two firearms in compliance with Section 30945 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon.

(2) The person has not previously been convicted of a violation of this article.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to Section 30900.

(4) The person relinquished the firearm pursuant to Section 31100, in which case the assault weapon shall be destroyed pursuant to Sections 18000 and 18005.

SEC. 551. Section 30725 of the Penal Code is amended to read:

30725. (a) Any person who complies with Section 30720 shall be exempt from the prohibitions set forth in Section 30600 or 30605 for those acts by that person associated with complying with the requirements of Section 30720.

(b) Failure to comply with Section 30720 is a public offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or in a county jail, not exceeding one year.

SEC. 552. Section 31360 of the Penal Code is amended to read:

31360. (a) A person who has been convicted of a violent felony under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in Section 16288, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment ~~in a state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(b) A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition for an exception to this prohibition with the chief of police or county sheriff of the jurisdiction in which that person seeks to possess and use the body armor. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or

elimination of the prohibition, or otherwise grant relief from the prohibition as the chief of police or sheriff deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on the petitioner's person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

SEC. 553. Section 32625 of the Penal Code is amended to read:

32625. (a) Any person, firm, or corporation, who within this state possesses or knowingly transports a machinegun, except as authorized by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) Any person, firm, or corporation who within this state intentionally converts a firearm into a machinegun, or who sells, or offers for sale, or knowingly manufactures a machinegun, except as authorized by this chapter, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for four, six, or eight years.

SEC. 554. Section 33410 of the Penal Code is amended to read:

33410. Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

SEC. 555. Section 10283 of the Public Contract Code is amended to read:

10283. Such felonies are punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 556. Section 10873 of the Public Contract Code is amended to read:

10873. Such felonies are punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 557. Section 5097.99 of the Public Resources Code is amended to read:

5097.99. (a) No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (*l*) of Section 5097.94 or pursuant to Section 5097.98.

(b) Any person who knowingly or willfully obtains or possesses any Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (*l*) of Section 5097.94 or pursuant to Section 5097.98, is guilty of a felony which is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(c) Any person who removes, without authority of law, any Native American artifacts or human remains from a Native American grave or cairn with an intent to sell or dissect or with malice or wantonness is guilty of a felony which is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 558. Section 14591 of the Public Resources Code is amended to read:

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for each subsequent separate violation per day.

(b) (1) Every person who, with intent to defraud, takes any of the following actions is guilty of fraud:

(A) Submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5.

(B) Fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550.

(C) Fails to make payments as required by Section 14574.

(D) Redeems out-of-state containers, rejected containers, line breakage, or containers that have already been redeemed.

(E) Returns redeemed containers to the marketplace for redemption.

(F) Brings out-of-state containers, rejected containers, or line breakage to the marketplace for redemption.

(G) Submits a false or fraudulent claim for handling fee payments pursuant to Section 14585.

(2) If the money obtained or withheld pursuant to paragraph (1) exceeds nine hundred fifty dollars ($950), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld pursuant to paragraph (1) equals, or is less than, nine hundred fifty dollars ($950), the fraud is

punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) For purposes of this section and Chapter 8.5 (commencing with Section 14595), "line breakage" and "rejected container" have the same meanings as defined in the regulations adopted or amended by the department pursuant to this division.

SEC. 559. Section 25205 of the Public Resources Code is amended to read:

25205. (a) No person shall be a member of the commission who, during the two years prior to appointment on the commission, received any substantial portion of his or her income directly or indirectly from any electric utility, or who engages in sale or manufacture of any major component of any facility. A member of the commission shall not be employed by any electric utility, applicant, or, within two years after he or she ceases to be a member of the commission, by any person who engages in the sale or manufacture of any major component of any facility.

(b) Except as provided in Section 25202, the members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Section 19251 of the Government Code.

(d) A person who is a member or employee of the commission shall not participate personally and substantially as a member or employee of the commission, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which, to his or her knowledge, he or she, his or her spouse, minor child, or partner, or any organization, except a governmental agency or educational or research institution qualifying as a nonprofit organization under state or federal income tax law, in which he or she is serving, or has served as officer, director, trustee, partner, or employee while serving as a member or employee of the commission or within two years prior to his or her appointment as a member of the commission, has a direct or indirect financial interest.

(e) A person who is a partner, employer, or employee of a member or employee of the commission shall not act as an attorney, agent, or employee for any person other than the state in connection with any judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which the commission is a party or has a direct and substantial interest.

(f) The provisions of this section shall not apply if the Attorney General finds that the interest of the member or employee of the commission is not so substantial as to be deemed likely to affect the integrity of the services which the state may expect from the member or employee.

(g) Any person who violates any provision of this section is guilty of a felony and shall be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both *that fine and imprisonment*.

(h) The amendment of subdivision (d) of this section enacted by the 1975–76 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.

SEC. 560. Section 48680 of the Public Resources Code is amended to read:

48680. (a) Except as provided in subdivision (b), in addition to any other civil or criminal penalties, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable by a fine of not more than one hundred dollars ($100) per day for each day the violation occurs.

(b) (1) Every person who, with intent to defraud, does not accurately report the amount of oil sold, collected, or transferred pursuant to Article 8 (commencing with Section 48670), who, with intent to defraud, does not make payments as required by Section 48650, or who knowingly receives or pays a recycling incentive for oil upon which a payment has not been made pursuant to Section 48650 is guilty of fraud. If the money obtained or withheld is four hundred dollars ($400) or less, the fraud is punishable by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. If the money obtained or withheld is more than four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or

imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, by a fine not exceeding ten thousand dollars ($10,000), or twice the late or unmade payments plus interest, whichever is greater, or by both that fine and imprisonment.

(2) Any person who claims an exemption pursuant to this chapter which the person knows to be false, and makes that claim for the purpose of willfully evading the payment of any fee imposed pursuant to this chapter, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year. The person shall also be subject to payment of a fine not to exceed five thousand dollars ($5,000). The fine shall be distributed as follows:

(A) Fifty percent to the local jurisdiction which undertook the prosecution.

(B) Fifty percent to the General Fund.

(c) Any person who violates this chapter may be assessed a civil penalty by the board of not more than one hundred dollars ($100) per day for each day the violation occurs or continues, pursuant to a hearing and notice.

SEC. 561. Section 7680 of the Public Utilities Code is amended to read:

7680. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who willfully or negligently suffers or causes it to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three or four years.

SEC. 562. Section 7724 of the Public Utilities Code is amended to read:

7724. (a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 24, or 36 months:

(1) Except as provided by Section 7724.1, knowingly fails to follow the direction or order of the secretary or the commission arising from a rail accident or release of a hazardous or potentially hazardous commodity from a railcar.

(2) Knowingly causes, or aids or abets in, the discharge or spill of, a hazardous or potentially hazardous commodity from a railcar, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(3) Knowingly fails to comply with the regulations adopted pursuant to Section 7712, and that failure results in a rail accident or release of hazardous material or creates a significant risk of accident or release of hazardous material.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine not to exceed five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) The court shall also impose upon a person convicted of violating paragraph (1) of subdivision (a), a fine equal to twice the cost of abating, repairing, and responding to the cost associated with the illegal discharge of a hazardous or potentially hazardous commodity from a railcar as a result of a rail accident.

SEC. 563. Section 7903 of the Public Utilities Code is amended to read:

7903. Every agent, operator, or employee of any telegraph or telephone office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the information so obtained to his own account, profit, or advantage, is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in ~~the~~ *a* county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* fine and imprisonment.

SEC. 564. Section 21407.6 of the Public Utilities Code is amended to read:

21407.6. (a) Any person convicted under Section 21407.1 shall be punished upon a first conviction by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred fifty dollars ($250) nor more

than one thousand dollars ($1,000) or by both ~~such~~ *that* fine and imprisonment.

Any person convicted under Section 21407.1 shall be punished upon a second or any subsequent conviction by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000), without being granted probation by the court and without having the court suspend the execution of the sentence.

(b) Any person convicted under Section 21407.1 and who, when so operating an aircraft, has done any act forbidden by law or neglects any duty imposed by law in the operation of the aircraft, which act or neglect proximately causes bodily injury to any person other than the operator shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in the county jail for not less than 90 days nor more than one year and by fine of not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000).

SEC. 565. Section 7093.6 of the Revenue and Taxation Code, as amended by Section 171 of Chapter 140 of the Statutes of 2009, is amended to read:

7093.6. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6

(commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(*l*) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating

to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 566. Section 7093.6 of the Revenue and Taxation Code, as amended by Section 172 of Chapter 140 of the Statutes of 2009, is amended to read:

7093.6. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or

has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent,

fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(*l*) This section shall become operative on January 1, 2013.

SEC. 567. Section 9278 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 222 of the Statutes of 2008, is amended to read:

9278. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 3 (commencing with Section 8601), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions

of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means either of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the vendor collected use fuel tax reimbursement from the purchaser or other person and which was determined against the vendor under Article 2 (commencing with Section 8776), Article 3 (commencing with Section 8801), or Article 5 (commencing with Section 8851) of Chapter 4.

(B) A final tax liability, including related interest, additions to tax, penalties or other amounts assessed under this part, arising under Article 4.5 (commencing with Section 9021) of Chapter 5.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement

may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required use fuel tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file use fuel tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are

fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(*l*) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 9255. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating

to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 568. Section 9278 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

9278. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 3 (commencing with Section 8601), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability.

However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 9255. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty

thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(*l*) This section shall become operative on January 1, 2013.

SEC. 569. Section 14251 of the Revenue and Taxation Code is amended to read:

14251. All information and records acquired by the Controller or any of his or her employees are confidential in nature, and except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, shall not be disclosed by any of them.

Except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, any former or incumbent Controller or employee of the Controller who discloses any information acquired by any inspection or examination made pursuant to this article is guilty of a felony, and upon conviction shall be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 570. Section 16910 of the Revenue and Taxation Code is amended to read:

16910. All information and records acquired by the Controller or any of his employees are confidential in nature, and, except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, shall not be disclosed by any of them.

Except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, any former or incumbent

Controller or employee of the Controller who discloses any information acquired by any inspection or examination made pursuant to this article is guilty of a felony, and upon conviction shall be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 571. Section 18631.7 of the Revenue and Taxation Code is amended to read:

18631.7. (a) Any check casher engaged in the trade or business of cashing checks that, in the course of that trade or business, cashes checks other than one-party checks, payroll checks, or government checks totaling more than ten thousand dollars ($10,000) in one transaction or two or more transactions for the same person within the calendar year, shall file an informational return with the Franchise Tax Board with respect to that transaction or transactions.

(b) The return required in subdivision (a) shall be filed no later than 90 days after the end of the calendar year and in the form and manner prescribed by the Franchise Tax Board, and shall, at a minimum, contain both of the following:

(1) The name, address, taxpayer identification number, and any other identifying information of the person presenting the check that the Franchise Tax Board deems necessary.

(2) The amount and date of the transaction or transactions.

(c) For purposes of this section the following definitions apply:

(1) Except as otherwise provided, "check casher" means a check casher as defined under Section 1789.31 of the Civil Code.

(2) "Checks" includes warrants, drafts, money orders, and other commercial paper serving the same purposes, including payroll checks, government checks, and one-party checks.

(3) "Government check" means a check issued by a federal, state, or local governmental entity and treated as a government check pursuant to Section 1789.35 of the Civil Code for fee-setting purposes.

(4) "Payroll check" means a check for wages subject to withholding pursuant to Section 13020 of the Unemployment Insurance Code and treated as a payroll check pursuant to Section 1789.35 of the Civil Code for fee-setting purposes.

(5) "One-party check" means a check drawn upon the maker's account and presented by the maker.

(d) With respect to a person who fails to file the report required by this section or fails to include all of the information required to be shown on that report, both of the following apply:

(1) Sections 6721 and 6724 of the Internal Revenue Code, as those sections read on January 1, 2005, apply, except that the "Franchise Tax Board" is substituted for the "secretary" in each place it appears in those sections.

(2) If the failure was willful, the person, upon conviction, shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) or, in the case of a corporation, not more than one hundred thousand dollars ($100,000), by imprisonment in a county jail for not more than one year, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment, together with the costs of prosecution.

SEC. 572. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be

falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars ($50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars ($200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. 573. Section 19708 of the Revenue and Taxation Code is amended to read:

19708. Any person required under this part to collect, account for, and pay over any tax or amount required to be withheld who willfully fails to collect or truthfully account for and pay over the tax or amount shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand dollars ($2,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both.

SEC. 574. Section 30459.15 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 222 of the Statutes of 2008, is amended to read:

30459.15. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling

interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(3) Notwithstanding paragraph (1) or (2), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means either of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected cigarette or tobacco products tax reimbursement or cigarette or tobacco products tax reimbursement from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 30201), Article 3 (commencing with Section 30221), or Article 5 (commencing with Section 30261) of Chapter 4.

(B) That part of a final tax liability for cigarette or tobacco products tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 30201), Article 3 (commencing with Section 30221), and Article 5 (commencing with Section 30261) of Chapter 4 against a taxpayer who is a consumer that is not required to hold a license under Article 1 (commencing with Section 30140) of Chapter 3.

(4) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required cigarette and tobacco products tax reports or returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file cigarette and tobacco products tax reports or returns, whichever period is earlier.

(h) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (i) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event

an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating

to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 575. Section 30459.15 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

30459.15. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is

not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(d) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (e) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 576. Section 32471.5 of the Revenue and Taxation Code, as amended by Section 4 of Chapter 222 of the Statutes of 2008, is amended to read:

32471.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a

controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means that part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected reimbursement or tax reimbursement from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 32271), Article 3 (commencing with Section 32291), or Article 4 (commencing with Section 32301) of Chapter 6.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic

funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required tax returns and reports for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file tax returns and reports, whichever period is earlier.

(h) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 577. Section 32471.5 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

32471.5. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer

to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity

owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 578. Section 32555 of the Revenue and Taxation Code is amended to read:

32555. Every person convicted of a felony for a violation of any of the provisions of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both such fine and imprisonment.

SEC. 579. Section 38800 of the Revenue and Taxation Code is amended to read:

38800. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 18.5 (commencing with Section 38101), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from persons who no longer harvest timber, or property owners that no longer harvest their property, except where the taxpayer making the offer has their primary residence located on the property that generated the timber tax liability.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 38705. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 580. Section 40211.5 of the Revenue and Taxation Code is amended to read:

40211.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final surcharge liability" means any final surcharge liability arising under Part 19 (commencing with Section 40001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or

transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business

combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, "person" means the taxpayer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 581. Section 41171.5 of the Revenue and Taxation Code, as amended by Section 5 of Chapter 222 of the Statutes of 2008, is amended to read:

41171.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is

in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final surcharge liability" means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final surcharge liability may be compromised regardless of whether the business has been discontinued or transferred or whether the surcharge payer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final surcharge liability shall also apply to a qualified final surcharge liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final surcharge liability" means either of the following:

(A) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the service supplier collected the surcharge from the service user or other person and which was determined against the service supplier under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), or Article 5 (commencing with Section 41085) of Chapter 4.

(B) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, determined under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), and Article 5 (commencing with Section 41085) of Chapter 4 against a service user who is a consumer that is not required to register

with the board under Article 3 (commencing with section 41040) of Chapter 2.

(3) A qualified final surcharge liability may not be compromised with any of the following:

(A) A surcharge payer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the surcharge payer is making the offer.

(B) A business that was transferred by a surcharge payer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the surcharge payer's liability was previously compromised.

(C) A business in which a surcharge payer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the surcharge payer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the surcharge payer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the surcharge payer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A surcharge payer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the surcharge payer has sufficient annual income

during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A surcharge payer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required emergency telephone users surcharge returns for a five-year period from the date the liability is compromised, or until the surcharge payer is no longer required to file emergency telephone users surcharge returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are

fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(m) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(n) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(q) For purposes of this section, "person" means the surcharge payer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 582. Section 41171.5 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

41171.5. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction

in surcharges in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final surcharge liability" means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no

releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, “person” means the surcharge payer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 583. Section 43522.5 of the Revenue and Taxation Code is amended to read:

43522.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 22 (commencing with Section 43001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer

to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 43651. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity

owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 584. Section 43606 of the Revenue and Taxation Code is amended to read:

43606. Every person convicted of a felony for a violation of any of the provisions of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or by both that fine and imprisonment.

SEC. 585. Section 45867.5 of the Revenue and Taxation Code is amended to read:

45867.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 586. Section 45955 of the Revenue and Taxation Code is amended to read:

45955. Every person convicted of a felony for a violation of any provision of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment.

SEC. 587. Section 46628 of the Revenue and Taxation Code, as amended by Section 6 of Chapter 222 of the Statutes of 2008, is amended to read:

46628. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of

seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final fee liability may be compromised regardless of whether the business has been discontinued or transferred or whether the feepayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final fee liability shall also apply to a qualified final fee liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final fee liability" means any of the following:

(A) That part of a final fee liability, including related interest, additions to fee, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the marine terminal operator or operator of a pipeline collected the oil spill prevention and administration fee from the owner of the petroleum products or crude oil or other person and which was determined against the feepayer under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), or Article 5 (commencing with Section 46351) of Chapter 3.

(B) A final fee liability, including related interest, additions to fee, penalties, or other amounts assessed under this part, arising under Article 6 (commencing with Section 46451) of Chapter 4.

(C) That part of a final fee liability, including related interest, additions to fee, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), and Article 5

(commencing with Section 46351) of Chapter 3 against an owner of crude oil or petroleum products that is not required to register with the board under Article 2 (commencing with section 46101) of Chapter 2.

(3) A qualified final fee liability may not be compromised with any of the following:

(A) A feepayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the feepayer is making the offer.

(B) A business that was transferred by a feepayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(C) A business in which a feepayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the feepayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the feepayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A feepayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any

portion thereof, if the feepayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A feepayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required oil spill prevention and administration fee returns for a five-year period from the date the liability is compromised, or until the feepayer is no longer required to file oil spill prevention and administration fee returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are

fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(m) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(n) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating

to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(q) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 588. Section 46628 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

46628. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is

not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(i) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and

no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 589. Section 46705 of the Revenue and Taxation Code is amended to read:

46705. Every person convicted of a felony for a violation of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or

by both that fine and imprisonment in the discretion of the court, together with the cost of investigation and prosecution.

SEC. 590. Section 50156.18 of the Revenue and Taxation Code, as amended by Section 7 of Chapter 222 of the Statutes of 2008, is amended to read:

50156.18. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability in which the reduction of the fee is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final fee liability may be compromised regardless of whether the business has been discontinued or transferred or whether the feepayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final fee liability shall also apply to a qualified final fee liability, and no compromise shall be made under this subdivision unless all other requirements of this section

are met. For purposes of this subdivision, a "qualified final fee liability" means that part of a final fee liability, including related interest, additions to fee, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the owner of the underground storage tank collected underground storage tank maintenance fee reimbursement from the operator of the underground storage tank or other person and which was determined against the feepayer under Article 2 (commencing with Section 50113) or Article 3 (commencing with Section 50114) of Chapter 3.

(3) A qualified final fee liability may not be compromised with any of the following:

(A) A feepayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the feepayer is making the offer.

(B) A business that was transferred by a feepayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(C) A business in which a feepayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the feepayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the feepayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization

shall not participate in any offer in compromise matters pursuant to this section.

(f) A feepayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the feepayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A feepayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required underground storage tank maintenance fee returns for a five-year period from the date the liability is compromised, or until the feepayer is no longer required to file underground storage tank maintenance fee returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(k) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer shall not relieve the other feepayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(*l*) Whenever a compromise of the fee or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Chapter 8 of Article 2 (commencing with Section 50156). No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(o) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 591. Section 50156.18 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

50156.18. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability in which the reduction of the fee is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess

of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(g) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer shall not relieve the other feepayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of the fee or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Chapter 8 of Article 2 (commencing with Section 50156). No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(k) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(*l*) This section shall become operative on January 1, 2013.

SEC. 592. Section 55332.5 of the Revenue and Taxation Code, as amended by Section 8 of Chapter 222 of the Statutes of 2008, is amended to read:

55332.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 30 (commencing with Section 55001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final fee liability may be compromised regardless of whether the business has been discontinued or transferred or whether the feepayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final fee liability shall also apply to a qualified final fee liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final fee liability" means that part of a final fee liability, including related interest, additions to fee, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the feepayer collected the fee from the purchaser or other person and which was determined against the feepayer under Article 2 (commencing with Section 55061) or Article 3 (commencing with Section 55081) of Chapter 3.

(3) A qualified final fee liability may not be compromised with any of the following:

(A) A feepayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the feepayer is making the offer.

(B) A business that was transferred by a feepayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(C) A business in which a feepayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the feepayer

received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the feepayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the feepayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A feepayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the feepayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A feepayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required returns for a five-year period from the date the liability is compromised, or until the feepayer is no longer required to file returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer

to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(m) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(n) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 55381. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate fee.

(q) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity

owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 593. Section 55332.5 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

55332.5. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 30 (commencing with Section 55001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(i) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 55381. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate fee.

(m) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 594. Section 55363 of the Revenue and Taxation Code is amended to read:

55363. Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, 2, or 3 years and a fine of not more than five thousand dollars ($5,000).

SEC. 595. Section 60637 of the Revenue and Taxation Code, as amended by Section 9 of Chapter 222 of the Statutes of 2008, is amended to read:

60637. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been

discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the supplier collected diesel fuel tax reimbursement from the purchaser or other person and which was determined by the board against the taxpayer under Article 2 (commencing with Section 60301), Article 3 (commencing with Section 60310), Article 5 (commencing with Section 60350), or Article 6 (commencing with Section 60360) of Chapter 6.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 6 (commencing with Section 60471) of Chapter 7.

(C) That part of a final tax liability for diesel fuel tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 60301), Article 3 (commencing with Section 60310), Article 5 (commencing with Section 60350) and Article 6 (commencing with Section 60360) of Chapter 6 against an exempt bus operator, government entity, or qualified highway vehicle operator who used dyed diesel fuel on the highway.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the

transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(*l*) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~

pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 596. Section 60637 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

60637. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 31 (commencing with

Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 597. Section 2118.5 of the Unemployment Insurance Code is amended to read:

2118.5. Any person required by this code to collect, account for, and pay over any tax or amount required to be withheld who willfully fails to collect or truthfully account for and pay over the tax or amount shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined an amount not more than twenty thousand dollars ($20,000), or imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or both the fine and imprisonment, at the discretion of the court.

SEC. 598. Section 2478 of the Vehicle Code is amended to read:

2478. (a) Any person who is found guilty of violating Section 2470, 2472, 2474, or 2476, or the rules and regulations promulgated under those provisions, is subject to imprisonment in the county

jail for not more than one year, or a fine of not more than one thousand dollars ($1,000), or both that imprisonment and fine.

(b) If the conviction is a second or subsequent conviction of a violation described in subdivision (a), or the violation is committed with intent to defraud or mislead, the person is subject to imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or a fine of not more than ten thousand dollars ($10,000), or both that imprisonment and fine.

SEC. 599. Section 2800.4 of the Vehicle Code is amended to read:

2800.4. Whenever a person willfully flees or attempts to elude a pursuing peace officer in violation of Section 2800.1, and the person operating the pursued vehicle willfully drives that vehicle on a highway in a direction opposite to that in which the traffic lawfully moves upon that highway, the person upon conviction is punishable by imprisonment for not less than six months nor more than one year in a county jail or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

SEC. 600. Section 4463 of the Vehicle Code is amended to read:

4463. (a) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months or two or three years, or by imprisonment in a county jail for not more than one year:

(1) Alters, forges, counterfeits, or falsifies a certificate of ownership, registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit provided for by this code or a comparable certificate of ownership, registration card, certificate, license, license plate, device comparable to that issued pursuant to Section 4853, special plate, or permit provided for by a foreign jurisdiction, or alters, forges, counterfeits, or falsifies the document, device, or plate with intent to represent it as issued by the department, or alters, forges, counterfeits, or falsifies with fraudulent intent an endorsement of transfer on a certificate of ownership or other document evidencing

ownership, or with fraudulent intent displays or causes or permits to be displayed or have in his or her possession a blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false certificate of ownership, registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit.

(2) Utters, publishes, passes, or attempts to pass, as true and genuine, a false, altered, forged, or counterfeited matter listed in paragraph (1) knowing it to be false, altered, forged, or counterfeited.

(b) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in a county jail for six months, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000), or both that fine and imprisonment, which penalty shall not be suspended:

(1) Forges, counterfeits, or falsifies a disabled person placard or a comparable placard relating to parking privileges for disabled persons provided for by a foreign jurisdiction, or forges, counterfeits, or falsifies a disabled person placard with intent to represent it as issued by the department.

(2) Passes, or attempts to pass, as true and genuine, a false, forged, or counterfeit disabled person placard knowing it to be false, forged, or counterfeited.

(3) Acquires, possesses, sells, or offers for sale a genuine or counterfeit disabled person placard.

(c) A person who, with fraudulent intent, displays or causes or permits to be displayed a forged, counterfeit, or false disabled person placard, is subject to the issuance of a notice of parking violation imposing a civil penalty of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000), for which enforcement shall be governed by the procedures set forth in Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 or is guilty of a misdemeanor punishable by imprisonment in a county jail for six months, a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000), or both that fine and imprisonment, which penalty shall not be suspended.

(d) For purposes of subdivision (b) or (c), "disabled person placard" means a placard issued pursuant to Section 22511.55 or 22511.59.

(e) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of an infraction, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) and not more than two hundred fifty dollars ($250) for a first offense, not less than two hundred fifty dollars ($250) and not more than five hundred dollars ($500) for a second offense, and not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for a third or subsequent offense, which penalty shall not be suspended:

(1) Forges, counterfeits, or falsifies a Clean Air Sticker or a comparable clean air sticker relating to high occupancy vehicle lane privileges provided for by a foreign jurisdiction, or forges, counterfeits, or falsifies a Clean Air Sticker with intent to represent it as issued by the department.

(2) Passes, or attempts to pass, as true and genuine, a false, forged, or counterfeit Clean Air Sticker knowing it to be false, forged, or counterfeited.

(3) Acquires, possesses, sells, or offers for sale a counterfeit Clean Air Sticker.

(4) Acquires, possesses, sells, or offers for sale a genuine Clean Air Sticker separate from the vehicle for which the department issued that sticker.

(f) As used in this section, "Clean Air Sticker" means a label or decal issued pursuant to Sections 5205.5 and 21655.9.

SEC. 601. Section 10501 of the Vehicle Code is amended to read:

10501. (a) It is unlawful for any person to make or file a false or fraudulent report of theft of a vehicle required to be registered under this code with any law enforcement agency with intent to deceive.

(b) If a person has been previously convicted of a violation of subdivision (a), he or she is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years, or in a county jail for not to exceed one year.

SEC. 602. Section 10752 of the Vehicle Code is amended to read:

10752. (a) No person shall, with intent to prejudice, damage, injure, or defraud, acquire, possess, sell, or offer for sale any genuine or counterfeit manufacturer's serial or identification number from or for, or purporting to be from or for, a vehicle or component part thereof.

(b) No person shall, with intent to prejudice, damage, injure, or defraud, acquire, possess, sell, or offer for sale any genuine or counterfeit serial or identification number issued by the department, the Department of the California Highway Patrol, or the vehicle registration and titling agency of any foreign jurisdiction which is from or for, or purports to be from or for, a vehicle or component part thereof.

(c) Every person convicted of a violation of subdivision (a) or (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in the county jail for not less than 90 days nor more than one year, and by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000).

SEC. 603. Section 10801 of the Vehicle Code is amended to read:

10801. Any person who knowingly and intentionally owns or operates a chop shop is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by a fine of not more than fifty thousand dollars ($50,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

SEC. 604. Section 10802 of the Vehicle Code is amended to read:

10802. Any person who knowingly alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or removes vehicle identification numbers, with the intent to misrepresent the identity or prevent the identification of motor vehicles or motor vehicle parts, for the purpose of sale, transfer, import, or export, is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years, or by a fine of not more than twenty-five thousand dollars

($25,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

SEC. 605. Section 10803 of the Vehicle Code is amended to read:

10803. (a) Any person who buys with the intent to resell, disposes of, sells, or transfers, more than one motor vehicle or parts from more than one motor vehicle, with the knowledge that the vehicle identification numbers of the motor vehicles or motor vehicle parts have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed for the purpose of misrepresenting the identity or preventing the identification of the motor vehicles or motor vehicle parts, is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years, or by a fine of not more than sixty thousand dollars ($60,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who possesses, for the purpose of sale, transfer, import, or export, more than one motor vehicle or parts from more than one motor vehicle, with the knowledge that the vehicle identification numbers of the motor vehicles or motor vehicle parts have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed for the purpose of misrepresenting the identity or preventing the identification of the motor vehicles or motor vehicle parts, is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, or two or three years, or by a fine of not more than thirty thousand dollars ($30,000), or by both the fine and imprisonment, or by imprisonment in the county jail not exceeding one year or by a fine of not more than one thousand dollars ($1,000) or by both the fine and imprisonment.

SEC. 606. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner

thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years or by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(d) The existence of any fact which makes subdivision (b) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) Any person who has been convicted of one or more previous felony violations of this section, or felony grand theft of a vehicle in violation of subdivision (d) of Section 487 of the Penal Code,

former subdivision (3) of Section 487 of the Penal Code, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h of the Penal Code, is punishable as set forth in Section 666.5 of the Penal Code. The existence of any fact that would bring a person under Section 666.5 of the Penal Code shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

(f) This section shall become operative on January 1, 1997.

SEC. 607. Section 21464 of the Vehicle Code is amended to read:

21464. (a) A person, without lawful authority, may not deface, injure, attach any material or substance to, knock down, or remove, nor may a person shoot at, any official traffic control device, traffic guidepost, traffic signpost, motorist callbox, or historical marker placed or erected as authorized or required by law, nor may a person without lawful authority deface, injure, attach any material or substance to, or remove, nor may a person shoot at, any inscription, shield, or insignia on any device, guide, or marker.

(b) A person may not use, and a vehicle, other than an authorized emergency vehicle or a public transit passenger vehicle, may not be equipped with, any device, including, but not limited to, a mobile infrared transmitter, that is capable of sending a signal that interrupts or changes the sequence patterns of an official traffic control signal unless that device or use is authorized by the Department of Transportation pursuant to Section 21350 or by local authorities pursuant to Section 21351.

(c) A person may not buy, possess, manufacture, install, sell, offer for sale, or otherwise distribute a device described in subdivision (b), including, but not limited to, a mobile infrared transmitter (MIRT), unless the purchase, possession, manufacture, installation, sale, offer for sale, or distribution is for the use of the device by a peace officer or other person authorized to operate an authorized emergency vehicle or a public transit passenger vehicle, in the scope of his or her duties.

(d) Any willful violation of subdivision (a), (b), or (c) that results in injury to, or the death of, a person is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of*

the Penal Code, or by imprisonment in a county jail for a period of not more than six months, and by a fine of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(e) Any willful violation of subdivision (a), (b), or (c) that does not result in injury to, or the death of, a person is punishable by a fine of not more than five thousand dollars ($5,000).

(f) The court shall allow the offender to perform community service designated by the court in lieu of all or part of any fine imposed under this section.

SEC. 608. Section 21651 of the Vehicle Code is amended to read:

21651. (a) Whenever a highway has been divided into two or more roadways by means of intermittent barriers or by means of a dividing section of not less than two feet in width, either unpaved or delineated by curbs, double-parallel lines, or other markings on the roadway, it is unlawful to do either of the following:

(1) To drive any vehicle over, upon, or across the dividing section.

(2) To make any left, semicircular, or U-turn with the vehicle on the divided highway, except through an opening in the barrier designated and intended by public authorities for the use of vehicles or through a plainly marked opening in the dividing section.

(b) It is unlawful to drive any vehicle upon a highway, except to the right of an intermittent barrier or a dividing section which separates two or more opposing lanes of traffic. Except as otherwise provided in subdivision (c), a violation of this subdivision is a misdemeanor.

(c) Any willful violation of subdivision (b) which results in injury to, or death of, a person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or imprisonment in a county jail for a period of not more than six months.

SEC. 609. Section 23104 of the Vehicle Code is amended to read:

23104. (a) Except as provided in subdivision (b), whenever reckless driving of a vehicle proximately causes bodily injury to a person other than the driver, the person driving the vehicle shall, upon conviction thereof, be punished by imprisonment in the county jail for not less than 30 days nor more than six months or

by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) A person convicted of reckless driving that proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to a person other than the driver, who previously has been convicted of a violation of Section 23103, 23104, 23105, 23109, 23109.1, 23152, or 23153, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000) or by both the fine and imprisonment.

SEC. 610. Section 23105 of the Vehicle Code is amended to read:

23105. (a) A person convicted of reckless driving in violation of Section 23103 that proximately causes one or more of the injuries specified in subdivision (b) to a person other than the driver, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) This section applies to all of the following injuries:

(1) A loss of consciousness.

(2) A concussion.

(3) A bone fracture.

(4) A protracted loss or impairment of function of a bodily member or organ.

(5) A wound requiring extensive suturing.

(6) A serious disfigurement.

(7) Brain injury.

(8) Paralysis.

(c) This section does not preclude or prohibit prosecution under any other provision of law.

SEC. 611. Section 23109 of the Vehicle Code is amended to read:

23109. (a) A person shall not engage in a motor vehicle speed contest on a highway. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. For purposes of this section, an event in which the time to cover a prescribed route of more than 20 miles is measured, but where the vehicle does not exceed the speed limits, is not a speed contest.

(b) A person shall not aid or abet in any motor vehicle speed contest on any highway.

(c) A person shall not engage in a motor vehicle exhibition of speed on a highway, and a person shall not aid or abet in a motor vehicle exhibition of speed on any highway.

(d) A person shall not, for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon any highway.

(e) (1) A person convicted of a violation of subdivision (a) shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment. That person shall also be required to perform 40 hours of community service. The court may order the privilege to operate a motor vehicle suspended for 90 days to six months, as provided in paragraph (8) of subdivision (a) of Section 13352. The person's privilege to operate a motor vehicle may be restricted for 90 days to six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(2) If a person is convicted of a violation of subdivision (a) and that violation proximately causes bodily injury to a person other than the driver, the person convicted shall be punished by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) (1) If a person is convicted of a violation of subdivision (a) for an offense that occurred within five years of the date of a prior offense that resulted in a conviction of a violation of subdivision (a), that person shall be punished by imprisonment in a county jail for not less than four days nor more than six months, and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(2) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes bodily injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(3) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes serious bodily injury, as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code, to a person other than the driver, a person convicted of that second violation shall be imprisoned ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not less than 30 days nor more than one year, and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(4) The court shall order the privilege to operate a motor vehicle of a person convicted under paragraph (1), (2), or (3) suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352. In lieu of the suspension, the person's privilege to operate a motor vehicle may be restricted for six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(5) This subdivision does not interfere with the court's power to grant probation in a suitable case.

(g) If the court grants probation to a person subject to punishment under subdivision (f), in addition to subdivision (f) and any other terms and conditions imposed by the court, which may include a fine, the court shall impose as a condition of probation that the person be confined in a county jail for not less

than 48 hours nor more than six months. The court shall order the person's privilege to operate a motor vehicle to be suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352 or restricted pursuant to subdivision (f).

(h) If a person is convicted of a violation of subdivision (a) and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(i) A person who violates subdivision (b), (c), or (d) shall upon conviction of that violation be punished by imprisonment in a county jail for not more than 90 days, by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment.

(j) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this section, the court shall clearly mark the restriction and the dates of the restriction on that person's driver's license and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The Department of Motor Vehicles shall place that restriction in the person's records in the Department of Motor Vehicles and enter the restriction on a license subsequently issued by the Department of Motor Vehicles to that person during the period of the restriction.

(k) The court may order that a person convicted under this section, who is to be punished by imprisonment in a county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(*l*) This section shall be known and may be cited as the Louis Friend Memorial Act.

SEC. 612. Section 23109.1 of the Vehicle Code is amended to read:

23109.1. (a) A person convicted of engaging in a motor vehicle speed contest in violation of subdivision (a) of Section 23109 that proximately causes one or more of the injuries specified in subdivision (b) to a person other than the driver, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) This section applies to all of the following injuries:

(1) A loss of consciousness.
(2) A concussion.
(3) A bone fracture.
(4) A protracted loss or impairment of function of a bodily member or organ.
(5) A wound requiring extensive suturing.
(6) A serious disfigurement.
(7) Brain injury.
(8) Paralysis.
(c) This section does not preclude or prohibit prosecution under any other provision of law.

SEC. 613. Section 23110 of the Vehicle Code is amended to read:

23110. (a) Any person who throws any substance at a vehicle or any occupant thereof on a highway is guilty of a misdemeanor.
(b) Any person who with intent to do great bodily injury maliciously and willfully throws or projects any rock, brick, bottle, metal or other missile, or projects any other substance capable of doing serious bodily harm at such vehicle or occupant thereof is guilty of a felony and upon conviction shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 614. Section 23550 of the Vehicle Code is amended to read:

23550. (a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.
(b) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual

traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 615. Section 42000 of the Vehicle Code is amended to read:

42000. Unless a different penalty is expressly provided by this code, every person convicted of a felony for a violation of any provision of this code shall be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both such fine and imprisonment.

SEC. 616. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than twenty-five thousand dollars ($25,000), for each day in which the violation occurs, by imprisonment for not more than one year

in a county jail, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which the violation occurs, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months, or by both that fine and imprisonment.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than fifty thousand dollars ($50,000), for each day in which the violation occurs, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars ($100,000) for each day in which the violation occurs, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years, or by both that fine and imprisonment.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars ($250,000), imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 5, 10, or 15 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars ($1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the punishment shall be by a fine of not more than five hundred thousand dollars ($500,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 10, 20, or 30 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be

subject to a fine of not more than two million dollars ($2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars ($25,000), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or 24 months, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars ($25,000) per day of violation, by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years, or by both that fine and imprisonment.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited

in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

SEC. 617. Section 871.5 of the Welfare and Institutions Code is amended to read:

871.5. (a) Except as authorized by law, or when authorized by the person in charge of any county juvenile hall, ranch, camp, or forestry camp, or by an officer of any juvenile hall or camp empowered by the person in charge to give that authorization, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp, or any person who while confined in any of those institutions possesses therein, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any firearm, weapon, or explosive of any kind, or any tear gas or tear gas weapon shall be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly uses tear gas or uses a tear gas weapon in an institution or camp specified in subdivision (a) is guilty of a felony.

(c) A sign shall be posted at the entrance of each county juvenile hall, ranch, camp, or forestry camp specifying the conduct prohibited by this section and the penalties therefor.

(d) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp, or any person who while confined in such an institution knowingly possesses therein, any alcoholic beverage shall be guilty of a misdemeanor.

(e) This section shall not be construed to preclude or in any way limit the applicability of any other law proscribing a course of conduct also proscribed by this section.

SEC. 618. Section 1001.5 of the Welfare and Institutions Code is amended to read:

1001.5. (a) Except when authorized by law, or when authorized by the person in charge of an institution or camp administered by the Youth Authority, or by an officer of the institution or camp empowered by the person in charge of the institution or camp to give that authorization, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any institution or camp, or the grounds belonging to any institution or camp, administered by the Youth Authority, or any person who, while confined in the institution or camp knowingly possesses therein, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code; any alcoholic beverage; any firearm, weapon or explosive of any kind; or any tear gas or tear gas weapon shall be punished by imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly uses tear gas or uses a tear gas weapon in any institution or camp specified in subdivision (a) is guilty of a felony.

(c) This section shall not be construed to preclude or in any way limit the applicability of any other law proscribing a course of conduct also proscribed by this section.

SEC. 619. Section 1710.5 is added to the Welfare and Institutions Code, to read:

1710.5. Notwithstanding any other law, on and after July 1, 2011, a county may enter into a memorandum of understanding with the state to provide for the admission of minors adjudicated for an offense listed under subdivision (b) of Section 707 to the Division of Juvenile Justice.

SEC. 620. Section 1731.5 of the Welfare and Institutions Code is amended to read:

1731.5. (a) After certification to the Governor as provided in this article, a court may commit to the Division of Juvenile Facilities any person who meets all of the following:

(1) Is convicted of an offense described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.

(2) Is found to be less than 21 years of age at the time of apprehension.

(3) Is not sentenced to death, imprisonment for life, with or without the possibility of parole, whether or not pursuant to Section 190 of the Penal Code, imprisonment for 90 days or less, or the payment of a fine, or after having been directed to pay a fine, defaults in the payment thereof, and is subject to imprisonment for more than 90 days under the judgment.

(4) Is not granted probation, or was granted probation and that probation is revoked and terminated.

(b) The Division of Juvenile Facilities shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefitted by its reformatory and educational discipline, and if it has adequate facilities to provide that care.

(c) Any person under 18 years of age who is not committed to the division pursuant to this section may be transferred to the authority by the Secretary of the Department of Corrections and Rehabilitation with the approval of the Chief Deputy Secretary for the Division of Juvenile Justice. In sentencing a person under 18 years of age, the court may order that the person shall be transferred to the custody of the Division of Juvenile Facilities pursuant to this subdivision. If the court makes this order and the division fails to accept custody of the person, the person shall be returned to court for resentencing. The transfer shall be solely for the purposes of housing the inmate, allowing participation in the programs available at the institution by the inmate, and allowing division parole supervision of the inmate, who, in all other aspects shall be deemed to be committed to the Department of Corrections and Rehabilitation and shall remain subject to the jurisdiction of the Secretary of the Department of Corrections and Rehabilitation and the Board of Parole Hearings. Notwithstanding subdivision (b) of Section 2900 of the Penal Code, the secretary, with the concurrence of the chief deputy secretary, may designate a facility under the jurisdiction of the chief deputy secretary as a place of reception for any person described in this subdivision.

The chief deputy secretary shall have the same powers with respect to an inmate transferred pursuant to this subdivision as if

the inmate had been committed or transferred to the Division of Juvenile Facilities either under the Arnold-Kennick Juvenile Court Law or subdivision (a).

The duration of the transfer shall extend until any of the following occurs:

(1) The chief deputy secretary orders the inmate returned to the Department of Corrections and Rehabilitation.

(2) The inmate is ordered discharged by the Board of Parole Hearings.

(3) The inmate reaches 18 years of age. However, if the inmate's period of incarceration would be completed on or before the inmate's 21st birthday, the chief deputy secretary may continue to house the inmate until the period of incarceration is completed.

(d) Except for counties that have entered into a memorandum of understanding pursuant to Section 1710.5, on and after July 1, 2011, the Division of Juvenile Justice shall no longer accept any juvenile offender commitments from the juvenile courts.

SEC. 621. Section 1768.7 of the Welfare and Institutions Code is amended to read:

1768.7. (a) Any person committed to the authority who escapes or attempts to escape from the institution or facility in which he or she is confined, who escapes or attempts to escape while being conveyed to or from such an institution or facility, who escapes or attempts to escape while outside or away from such an institution or facility under custody of Youth Authority officials, officers, or employees, or who, with intent to abscond from the custody of the Youth Authority, fails to return to such an institution or facility at the prescribed time while outside or away from the institution or facility on furlough or temporary release, is guilty of a felony.

(b) Any offense set forth in subdivision (a) which is accomplished by force or violence is punishable by imprisonment in the state prison for a term of two, four, or six years. Any offense set forth in subdivision (a) which is accomplished without force or violence is punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a term of 16 months, two or three years or in the county jail not exceeding one year.

(c) For purposes of this section, "committed to the authority" means a commitment to the Youth Authority pursuant to Section 731 or 1731.5; a remand to the custody of the Youth Authority

pursuant to Section 707.2; a placement at the Youth Authority pursuant to Section 704, 1731.6, or 1753.1; or a transfer to the custody of the Youth Authority pursuant to subdivision (c) of Section 1731.5.

SEC. 622. Section 1768.85 of the Welfare and Institutions Code is amended to read:

1768.85. (a) Every person confined under the jurisdiction of the Department of the Youth Authority who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the institution is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

(b) For purposes of this section, "gassing" means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person's skin or membranes.

(c) The person in charge of the institution under the jurisdiction of the Department of the Youth Authority shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that a ward has violated subdivision (a), the chief medical officer of the institution under the jurisdiction of the Department of the Youth Authority, or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the ward to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination

or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The person in charge of the institution under the jurisdiction of the Department of the Youth Authority shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

(e) The Department of the Youth Authority shall report to the Legislature, by January 1, 2003, its findings and recommendations on gassing incidents at the department's facilities and the medical testing authorized by this section. The report shall include, but not be limited to, all of the following:

(1) The total number of gassing incidents at each youth correctional facility up to the date of the report.

(2) The disposition of each gassing incident, including the administrative penalties imposed, the number of incidents that are prosecuted, and the results of those prosecutions, including any penalties imposed.

(3) A profile of the wards who commit the batteries by gassing, including the number of wards who have one or more prior serious or violent felony convictions.

(4) Efforts that the department has taken to limit these incidents, including staff training and the use of protective clothing and goggles.

(5) The results and costs of the medical testing authorized by this section.

(f) Nothing in this section shall preclude prosecution under both this section and any other provision of law.

SEC. 623. Section 3002 of the Welfare and Institutions Code is amended to read:

3002. Every person committed pursuant to this chapter or former Chapter 11 (commencing with Section 6399) of Title 7 of the Penal Code who escapes or attempts to escape from lawful custody is guilty of a crime punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the*

Penal Code. This section does not apply to unauthorized absence from a halfway house.

SEC. 624. Section 7326 of the Welfare and Institutions Code is amended to read:

7326. Any person who willfully assists any judicially committed or remanded patient of a state hospital or other public or private mental health facility to escape, to attempt to escape therefrom, or to resist being returned from a leave of absence shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code,* a fine of not more than ten thousand dollars ($10,000), or both such imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than two thousand dollars ($2,000), or both such imprisonment and fine.

SEC. 625. Section 8100 of the Welfare and Institutions Code, as amended by Section 16 of Chapter 1326 of the Statutes of 1992, is amended to read:

8100. (a) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to this subdivision once he or she is discharged from the facility.

(b) (1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of six months whenever, on or after January 1, 1992, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or victims. The six-month period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed

psychotherapist notifies a local law enforcement agency of the threat by that person. The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, pursuant to paragraph (3) and upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner.

(2) Upon receipt of the report from the local law enforcement agency pursuant to subdivision (c) of Section 8105, the Department of Justice shall notify by certified mail, return receipt requested, a person subject to this subdivision of the following:

(A) That he or she is prohibited from possessing, having custody or control over, receiving, or purchasing any firearm or other deadly weapon for a period of six months commencing from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The notice shall state the date when the prohibition commences and ends.

(B) That he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(3) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, have custody or control over, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or upon its own motion, the superior court may transfer the petition to the county in which the person resided at the time of the statements, or the county in which the person made the statements. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8105 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney is notified of the hearing date by the clerk of the court. The court, upon motion of the petitioner establishing that confidential

information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this paragraph. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court shall order that the person may have custody or control over, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the department shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(c) "Discharge," for the purposes of this section, does not include a leave of absence from a facility.

(d) "Attending health care professional," as used in this section, means the licensed health care professional primarily responsible for the person's treatment who is qualified to make the decision that the person has a mental disorder and has probable cause to believe that the person is a danger to self or others.

(e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and 8103, means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

(f) "Danger to self," as used in subdivision (a), means a voluntary person who has made a serious threat of, or attempted, suicide with the use of a firearm or other deadly weapon.

(g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this section shall be a public offense, punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(h) The prohibitions set forth in this section shall be in addition to those set forth in Section 8103.

(i) Any person admitted and receiving treatment prior to January 1, 1992, shall be governed by this section, as amended by Chapter 1090 of the Statutes of 1990, until discharged from the facility.

SEC. 626. Section 8100 of the Welfare and Institutions Code, as amended by Section 103 of Chapter 178 of the Statutes of 2010, is amended to read:

8100. (a) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to this subdivision once he or she is discharged from the facility.

(b) (1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of six months whenever, on or after January 1, 1992, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or victims. The six-month period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person. The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, pursuant to paragraph (3) and upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner.

(2) Upon receipt of the report from the local law enforcement agency pursuant to subdivision (c) of Section 8105, the Department of Justice shall notify by certified mail, return receipt requested, a person subject to this subdivision of the following:

(A) That he or she is prohibited from possessing, having custody or control over, receiving, or purchasing any firearm or other deadly weapon for a period of six months commencing from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The notice shall state the date when the prohibition commences and ends.

(B) That he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(3) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, have custody or control over, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or upon its own motion, the superior court may transfer the petition to the county in which the person resided at the time of the statements, or the county in which the person made the statements. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8105 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney is notified of the hearing date by the clerk of the court. The court, upon motion of the petitioner establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this paragraph. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court shall order that the person may

have custody or control over, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the department shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(c) "Discharge," for the purposes of this section, does not include a leave of absence from a facility.

(d) "Attending health care professional," as used in this section, means the licensed health care professional primarily responsible for the person's treatment who is qualified to make the decision that the person has a mental disorder and has probable cause to believe that the person is a danger to self or others.

(e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and 8103, means any weapon, the possession or concealed carrying of which is prohibited by any provision listed in Section 16590 of the Penal Code.

(f) "Danger to self," as used in subdivision (a), means a voluntary person who has made a serious threat of, or attempted, suicide with the use of a firearm or other deadly weapon.

(g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this section shall be a public offense, punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(h) The prohibitions set forth in this section shall be in addition to those set forth in Section 8103.

(i) Any person admitted and receiving treatment prior to January 1, 1992, shall be governed by this section, as amended by Chapter 1090 of the Statutes of 1990, until discharged from the facility.

SEC. 627. Section 8101 of the Welfare and Institutions Code is amended to read:

8101. (a) Any person who shall knowingly supply, sell, give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, three, or four years.

(c) "Deadly weapon," as used in this section has the meaning prescribed by Section 8100.

SEC. 628. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation

of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to

himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the People of the State of California have not met their burden pursuant to paragraph (6).

(2) (A) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five-year period. The

request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) Any person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 30 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 14 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county mental health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition in this section on the ownership, control, receipt, possession or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) Where the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) (A) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds

upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition, and the county mental health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, any

declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 629. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for

a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is nine hundred fifty dollars ($950) or less, by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than nine hundred fifty dollars ($950), by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable

by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Supplemental Nutrition Assistance Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Any person who knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) (1) is guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is nine hundred fifty dollars ($950) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) is guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds nine hundred fifty dollars ($950), and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term *pursuant to subdivision (h) of Section 1170 of the Penal Code* of one year ~~in state prison~~.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term *pursuant to subdivision (h) of Section 1170 of the Penal Code* of two years ~~in state prison~~.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term *pursuant to subdivision (h) of Section 1170 of the Penal Code* of three years ~~in state prison~~.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 630. Section 14107.2 of the Welfare and Institutions Code is amended to read:

14107.2. (a) Any person who solicits or receives any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind, either:

(1) In return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) In return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200), is punishable upon a first conviction by imprisonment in a county jail for not longer than one year or ~~state prison~~ *imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(b) Any person who offers or pays any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind, either:

(1) To refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) To purchase, lease, order, or arrange for or recommend the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200), is punishable upon a first conviction by imprisonment in a county jail for not longer than one year or ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

(c) Subdivisions (a) and (b) shall not apply to the following:

(1) Any amount paid by an employer to an employee, who has a bona fide employment relationship with that employer, for employment with provision of covered items or services.

(2) A discount or other reduction in price obtained by a provider of services or other entity under this chapter or Chapter 8 (commencing with Section 14200), if the reduction in price is properly disclosed and reflected in the costs claimed or charges made by the provider or entity under this chapter or Chapter 8

(commencing with Section 14200). This paragraph shall not apply to consultant pharmaceutical services rendered to nursing facilities nor to all categories of intermediate care facilities for the developmentally disabled.

(3) The practices or transactions between a federally qualified health center, as defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code, and any individual or entity shall be permitted only to the extent sanctioned or permitted by federal law.

(4) The provision of nonmonetary remuneration in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56631, 56644), and subsequently amended versions.

(d) For purposes of this section, "kickback" means a rebate or anything of value or advantage, present or prospective, or any promise or undertaking to give any rebate or thing of value or advantage, with a corrupt intent to unlawfully influence the person to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.

(e) The enforcement remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy.

SEC. 631. Section 14107.3 of the Welfare and Institutions Code is amended to read:

14107.3. Any person who knowingly and willfully charges, solicits, accepts, or receives, in addition to any amount payable under this chapter, any gift, money, contribution, donation, or other consideration as a precondition to providing services or merchandise to a Medi-Cal beneficiary for any service or merchandise in the Medi-Cal program's scope of benefits in addition to a claim submitted to the Medi-Cal program under this chapter or Chapter 8 (commencing with Section 14200), except either:

(1) To collect payments due under a contractual or legal entitlement pursuant to subdivision (b) of Section 14000; or

(2) To bill a long-term care patient or representative for the amount of the patient's share of the cost; or

(3) As provided under Section 14019.3, is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not to exceed ten thousand dollars ($10,000), or both such imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

SEC. 632. Section 14107.4 of the Welfare and Institutions Code is amended to read:

14107.4. (a) Any person who, with the intent to defraud, certifies as true and correct any cost report, submitted by a hospital to a state agency for reimbursement pursuant to Section 14170, who knowingly fails to disclose in writing on the cost report any significant beneficial interest, as defined in subdivision (d), which the owners of the provider, or members of the provider governing board, or employees of the provider, or independent contractor of the provider, have in the contractors or vendors to the providers, is guilty of a public offense.

(b) Any person who, with the intent to defraud, knowingly causes any material false information to be included in any cost report submitted by a hospital to a state agency for reimbursement pursuant to Section 14170 shall be guilty of an offense punishable by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by a fine not exceeding ten thousand dollars ($10,000), or by a fine and imprisonment, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both a fine and imprisonment.

(c) The provider's chief executive officer shall certify that any cost report submitted by a hospital to a state agency for reimbursement pursuant to Section 14170 shall be true and correct. In the case of a hospital which is operated as a unit of a coordinated group of health facilities and under common management, either the hospital's chief executive officer or administrator, or the chief financial officer of the operating region of which the hospital is a part, shall certify to the accuracy of the report.

(d) As used in this section, "significant beneficial interest" means any financial interest that is equal to or greater than twenty-five thousand dollars ($25,000) of ownership interest or 5

percent of the whole ownership or any other contractual or compensatory arrangement with vendors or contractors or immediate family members of vendors or contractors. "Immediate family" means spouse, son, daughter, father, mother, father-in-law, mother-in-law, daughter-in-law, or son-in-law. Interests held by these persons specified in subdivision (a) and members of these person's immediate family should be combined and included as a single interest.

(e) Any person who violates the provisions of subdivision (a) is punishable by imprisonment in the county jail for a period not to exceed one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by fine not to exceed five thousand dollars ($5,000), or by both such fine and imprisonment.

SEC. 633. Section 17410 of the Welfare and Institutions Code is amended to read:

17410. Any person who with the intent to defraud, buys or receives a voucher, invoice, or similar document issued for services or merchandise under this part without furnishing such services or merchandise is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars ($1,000), or by both ~~such~~ *that* imprisonment and fine, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for a period of not more than one year, by a fine of not exceeding ten thousand dollars ($10,000), or by both ~~such~~ *that* imprisonment and fine.

SEC. 635. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 636. This act will become operative no earlier than July 1, 2011, and only upon creation of a community corrections grant program to assist in implementing this act and upon an appropriation to fund the grant program.

SEC. 637. In addition to any amounts provided in the Budget Act of 2011, an appropriation of one thousand dollars ($1,000) is provided to the Department of Corrections and Rehabilitation for purpose of state operations in 2011–12 fiscal year, payable form the General Fund.

SEC. 638. This act addresses the fiscal emergency declared by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 639. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately

SEC. 640. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to obtain savings related to the budget for the 2011–12 fiscal year at the earliest possible time, it is necessary for this act to take effect immediately.

~~SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.~~

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