

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 428

Introduced by Senator Strickland

February 16, 2011

An act to amend ~~Section~~ Sections 7480, 15202.1, and 70372 of the Government Code, and to amend Sections 466, 633.8, 904.7, 992, 1181, 1203.01, 1203.4, 1203.4a, 1387, ~~and 1466~~ 1466, 11105.2, and 14314 of the Penal Code, to amend Section 10334 of the Public Contract Code, and to amend Sections 21203 and 21712 of the Vehicle Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 428, as amended, Strickland. Public safety omnibus bill.

(1) Existing law *generally regulates governmental access to financial records. Existing law provides that the dissemination of records pursuant to specified provisions shall not be prohibited.*

This bill would include within that category of records which the dissemination of shall not be prohibited, the dissemination of financial information and records pursuant to an order by a judge under specified authority relating to mortgage fraud.

(2) Existing law provides that, in any homicide cases in which a final judgment was entered prior to January 1, 1990, if the venue for trial of a homicide case has been changed from the county which is eligible for reimbursement, as specified, to a location more than 60 miles from the county seat of that county, and the district attorney of that county has entered into a contract with an attorney to try the case or an investigator to assist in the trial of the case, the Controller shall reimburse the county for the actual costs of the attorney or investigator, as specified.

This bill would instead apply the provisions above to any homicide cases in which a final judgment was not entered prior to January 1, 1990.

(3) *Existing law requires a state court construction penalty be imposed upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified,*

This bill would make a technical, nonsubstantive change to those provisions.

(2)

(4) Existing law makes it a misdemeanor for any person to have upon him or her in his or her possession a picklock, crow, keybit, crowbar, or other specified items, with felonious intent, or for other specified purposes.

This bill would instead make it a misdemeanor for any person to have upon him or her or in his or her possession those specified items, with felonious intent, or for those other specified purposes. By expanding the definition of a crime, this bill would create a state-mandated local program.

(3)

(5) Existing law authorizes peace officers to use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication under specified conditions.

This bill would make a technical, nonsubstantive change to those provisions.

(6) *Existing law provides for the impanelment of an additional civil grand jury in the County of San Bernardino pursuant to specified procedures.*

This bill would make a technical, nonsubstantive change to that provision.

(4)

(7) Existing law requires the court, in any case in which the defendant is charged with a felony, to require the defendant to provide a right thumbprint on a form developed for that purpose.

This bill would require the court to obtain the thumbprint at the arraignment on the information or indictment, or upon entry of a guilty or no contest plea unless the court has obtained the thumbprint at an earlier proceeding.

(5)

(8) Existing law provides that when a verdict has been rendered or a finding made against the defendant, the court may, upon the

defendant's application, grant a new trial, in limited specified cases, including when the jury has been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

This bill would make technical, nonsubstantive changes to those provisions.

(9) Existing law requires the clerk of the court, within 60 days after judgment has been pronounced, to mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered.

This bill would instead require the clerk to mail a copy of specified documents in cases in which the judgment includes a sentence of death or an indeterminate term. The bill would require, in all other cases, the clerk to mail specified documents upon written request by the Department of Corrections and Rehabilitation.

(10) Existing law generally provides for the granting of probation.

This bill would make a technical, nonsubstantive change to those provisions.

(11) Existing law provides that every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction, shall under specified conditions and procedures, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty and dismiss the accusatory pleading and release the defendant from all penalties and disabilities resulting from the offense, except as specified.

This bill would provide that those provisions do not apply to any infraction falling within the provisions of the Vehicle Code or to a local ordinance adopted pursuant to the Vehicle Code.

~~(6)~~

(12) Existing law provides that an order terminating an action, as specified, is a bar to any other prosecution for the same offense, except as specified. Existing law provides that an order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to specified grand jury proceedings and the indictment is based

upon the same subject matter as charged in the dismissed complaint, information, or indictment.

This bill would instead provide that an order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to those grand jury proceedings or an indictment is based upon the same subject matter as charged in a dismissed complaint, information, or indictment.

(7)

(13) Existing law permits, under specified conditions, an appeal to be taken from a judgment or order, in an infraction or misdemeanor case, to the appellate division of the superior court of the county in which the court from which the appeal is taken is located.

This bill would make technical, nonsubstantive changes to this provision.

(14) *Existing law authorizes the Department of Justice to provide subsequent arrest notification to specified agencies authorized to receive state summary criminal history information for purposes relating to the approval of relative caregivers and nonrelative extended family members.*

This bill would expand this authorization to permit the department to provide subsequent state or federal arrest notification to any entity authorized by state or federal code or regulation, as specified.

(15) *Existing law establishes the Environmental Enforcement and Training Account in the General Fund to be expended upon appropriation by the Legislature. Existing law provides that 25% or \$100,000, whichever is less, of the funds be provided to the Commission on Peace Officer Standards and Training (POST).*

This bill would permit POST to decline all or part of this allocation and provide that any funds so declined be made available, upon appropriation by the Legislature, for other authorized purposes for the training of peace officers.

(16) *Existing law provides that no state employee shall acquire any goods from the state, unless the goods are offered to the general public on the same terms and conditions as those applicable to the employee.*

This bill would authorize the spouse of a peace officer employed by the state who died in the line of duty to purchase the deceased officer's state-issued handgun, as specified.

(17) Existing law prohibits any person riding upon any motorcycle, motorized bicycle, bicycle, coaster, roller skates, sled, or toy vehicle from attaching to any streetcar or vehicle on the roadway.

This bill would additionally prohibit any person riding upon any type of human-powered or gravity-powered device, including, but not limited to, a tricycle, four-wheeled cycle, surrey, roller skis, wheeled shoes, skateboard, scooter, or skis from attaching to any streetcar or vehicle on the roadway.

(18) Existing law prohibits any person from knowingly driving a motor vehicle that is towing a person riding upon a motorcycle, motorized bicycle, bicycle, coaster, roller skates, sled, skis, or toy vehicle.

This bill additionally prohibits any person from knowingly driving a motor vehicle that is towing a person riding upon any type of human-powered or gravity-powered device, including, but not limited to, a tricycle, four-wheeled cycle, surrey, roller skis, wheeled shoes, skateboard, or scooter. By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

(8)

(19) 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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 7480 of the Government Code, as
2 amended by Section 29 of Chapter 697 of the Statutes of 2010, is
3 amended to read:

4 7480. Nothing in this chapter shall prohibit any of the
5 following:

6 (a) The dissemination of any financial information that is not
7 identified with, or identifiable as being derived from, the financial
8 records of a particular customer.

9 (b) When any police or sheriff’s department or district attorney
10 in this state certifies to a bank, credit union, or savings association
11 in writing that a crime report has been filed that involves the

1 alleged fraudulent use of drafts, checks, access cards, or other
2 orders drawn upon any bank, credit union, or savings association
3 in this state, the police or sheriff's department or district attorney,
4 a county adult protective services office when investigating the
5 financial abuse of an elder or dependent adult, or a long-term care
6 ombudsman when investigating the financial abuse of an elder or
7 dependent adult, may request a bank, credit union, or savings
8 association to furnish, and a bank, credit union, or savings
9 association shall furnish, a statement setting forth the following
10 information with respect to a customer account specified by the
11 requesting party for a period 30 days prior to, and up to 30 days
12 following, the date of occurrence of the alleged illegal act involving
13 the account:

14 (1) The number of items dishonored.

15 (2) The number of items paid that created overdrafts.

16 (3) The dollar volume of the dishonored items and items paid
17 which created overdrafts and a statement explaining any credit
18 arrangement between the bank, credit union, or savings association
19 and customer to pay overdrafts.

20 (4) The dates and amounts of deposits and debits and the account
21 balance on these dates.

22 (5) A copy of the signature card, including the signature and
23 any addresses appearing on a customer's signature card.

24 (6) The date the account opened and, if applicable, the date the
25 account closed.

26 (7) Surveillance photographs and video recordings of persons
27 accessing the crime victim's financial account via an automated
28 teller machine (ATM) or from within the financial institution for
29 dates on which illegal acts involving the account were alleged to
30 have occurred. Nothing in this paragraph does any of the following:

31 (A) Requires a financial institution to produce a photograph or
32 video recording if it does not possess the photograph or video
33 recording.

34 (B) Affects any existing civil immunities as provided in Section
35 47 of the Civil Code or any other provision of law.

36 (8) A bank, credit union, or savings association that provides
37 the requesting party with copies of one or more complete account
38 statements prepared in the regular course of business shall be
39 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

1 (c) When any police or sheriff's department or district attorney
2 in this state certifies to a bank, credit union, or savings association
3 in writing that a crime report has been filed that involves the
4 alleged fraudulent use of drafts, checks, access cards, or other
5 orders drawn upon any bank, credit union, or savings association
6 doing business in this state, the police or sheriff's department or
7 district attorney, a county adult protective services office when
8 investigating the financial abuse of an elder or dependent adult,
9 or a long-term care ombudsman when investigating the financial
10 abuse of an elder or dependent adult, may request, with the consent
11 of the accountholder, the bank, credit union, or savings association
12 to furnish, and the bank, credit union, or savings association shall
13 furnish, a statement setting forth the following information with
14 respect to a customer account specified by the requesting party for
15 a period 30 days prior to, and up to 30 days following, the date of
16 occurrence of the alleged illegal act involving the account:

- 17 (1) The number of items dishonored.
- 18 (2) The number of items paid that created overdrafts.
- 19 (3) The dollar volume of the dishonored items and items paid
20 which created overdrafts and a statement explaining any credit
21 arrangement between the bank, credit union, or savings association
22 and customer to pay overdrafts.
- 23 (4) The dates and amounts of deposits and debits and the account
24 balance on these dates.
- 25 (5) A copy of the signature card, including the signature and
26 any addresses appearing on a customer's signature card.
- 27 (6) The date the account opened and, if applicable, the date the
28 account closed.
- 29 (7) Surveillance photographs and video recordings of persons
30 accessing the crime victim's financial account via an automated
31 teller machine (ATM) or from within the financial institution for
32 dates on which illegal acts involving this account were alleged to
33 have occurred. Nothing in this paragraph does any of the following:
 - 34 (A) Requires a financial institution to produce a photograph or
35 video recording if it does not possess the photograph or video
36 recording.
 - 37 (B) Affects any existing civil immunities as provided in Section
38 47 of the Civil Code or any other provision of law.
- 39 (8) A bank, credit union, or savings association doing business
40 in this state that provides the requesting party with copies of one

1 or more complete account statements prepared in the regular course
2 of business shall be deemed to be in compliance with paragraphs
3 (1), (2), (3), and (4).

4 (d) For purposes of subdivision (c), consent of the accountholder
5 shall be satisfied if an accountholder provides to the financial
6 institution and the person or entity seeking disclosure, a signed
7 and dated statement containing all of the following:

8 (1) Authorization of the disclosure for the period specified in
9 subdivision (c).

10 (2) The name of the agency or department to which disclosure
11 is authorized and, if applicable, the statutory purpose for which
12 the information is to be obtained.

13 (3) A description of the financial records that are authorized to
14 be disclosed.

15 (e) (1) The Attorney General, a supervisory agency, the
16 Franchise Tax Board, the State Board of Equalization, the
17 Employment Development Department, the Controller or an
18 inheritance tax referee when administering the Prohibition of Gift
19 and Death Taxes (Part 8 (commencing with Section 13301) of
20 Division 2 of the Revenue and Taxation Code), a police or sheriff's
21 department or district attorney, a county adult protective services
22 office when investigating the financial abuse of an elder or
23 dependent adult, a long-term care ombudsman when investigating
24 the financial abuse of an elder or dependent adult, a county welfare
25 department when investigating welfare fraud, a county
26 auditor-controller or director of finance when investigating fraud
27 against the county, or the Department of Corporations when
28 conducting investigations in connection with the enforcement of
29 laws administered by the Commissioner of Corporations, from
30 requesting of an office or branch of a financial institution, and the
31 office or branch from responding to a request, as to whether a
32 person has an account or accounts at that office or branch and, if
33 so, any identifying numbers of the account or accounts.

34 (2) No additional information beyond that specified in this
35 section shall be released to a county welfare department without
36 either the accountholder's written consent or a judicial writ, search
37 warrant, subpoena, or other judicial order.

38 (3) A county auditor-controller or director of finance who
39 unlawfully discloses information he or she is authorized to request
40 under this subdivision is guilty of the unlawful disclosure of

1 confidential data, a misdemeanor, which shall be punishable as
2 set forth in Section 7485.

3 (f) The examination by, or disclosure to, any supervisory agency
4 of financial records that relate solely to the exercise of its
5 supervisory function. The scope of an agency's supervisory
6 function shall be determined by reference to statutes that grant
7 authority to examine, audit, or require reports of financial records
8 or financial institutions as follows:

9 (1) With respect to the Commissioner of Financial Institutions
10 by reference to Division 1 (commencing with Section 99), Division
11 1.5 (commencing with Section 4800), Division 2 (commencing
12 with Section 5000), Division 5 (commencing with Section 14000),
13 Division 7 (commencing with Section 18000), Division 15
14 (commencing with Section 31000), and Division 16 (commencing
15 with Section 33000), of the Financial Code.

16 (2) With respect to the Controller by reference to Title 10
17 (commencing with Section 1300) of Part 3 of the Code of Civil
18 Procedure.

19 (3) With respect to the Administrator of Local Agency Security
20 by reference to Article 2 (commencing with Section 53630) of
21 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
22 Code.

23 (g) The disclosure to the Franchise Tax Board of (1) the amount
24 of any security interest that a financial institution has in a specified
25 asset of a customer or (2) financial records in connection with the
26 filing or audit of a tax return or tax information return that are
27 required to be filed by the financial institution pursuant to Part 10
28 (commencing with Section 17001), Part 11 (commencing with
29 Section 23001), or Part 18 (commencing with Section 38001), of
30 the Revenue and Taxation Code.

31 (h) The disclosure to the State Board of Equalization of any of
32 the following:

33 (1) The information required by Sections 6702, 6703, 8954,
34 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
35 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
36 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
37 Revenue and Taxation Code.

38 (2) The financial records in connection with the filing or audit
39 of a tax return required to be filed by the financial institution
40 pursuant to Part 1 (commencing with Section 6001), Part 2

1 (commencing with Section 7301), Part 3 (commencing with Section
2 8601), Part 13 (commencing with Section 30001), Part 14
3 (commencing with Section 32001), and Part 17 (commencing with
4 Section 37001), of Division 2 of the Revenue and Taxation Code.

5 (3) The amount of any security interest a financial institution
6 has in a specified asset of a customer, if the inquiry is directed to
7 the branch or office where the interest is held.

8 (i) The disclosure to the Controller of the information required
9 by Section 7853 of the Revenue and Taxation Code.

10 (j) The disclosure to the Employment Development Department
11 of the amount of any security interest a financial institution has in
12 a specified asset of a customer, if the inquiry is directed to the
13 branch or office where the interest is held.

14 (k) The disclosure by a construction lender, as defined in Section
15 8006 of the Civil Code, to the Registrar of Contractors, of
16 information concerning the making of progress payments to a
17 prime contractor requested by the registrar in connection with an
18 investigation under Section 7108.5 of the Business and Professions
19 Code.

20 (l) Upon receipt of a written request from a local child support
21 agency referring to a support order pursuant to Section 17400 of
22 the Family Code, a financial institution shall disclose the following
23 information concerning the account or the person named in the
24 request, whom the local child support agency shall identify,
25 whenever possible, by social security number:

26 (1) If the request states the identifying number of an account at
27 a financial institution, the name of each owner of the account.

28 (2) Each account maintained by the person at the branch to
29 which the request is delivered, and, if the branch is able to make
30 a computerized search, each account maintained by the person at
31 any other branch of the financial institution located in this state.

32 (3) For each account disclosed pursuant to paragraphs (1) and
33 (2), the account number, current balance, street address of the
34 branch where the account is maintained, and, to the extent available
35 through the branch's computerized search, the name and address
36 of any other person listed as an owner.

37 (4) Whenever the request prohibits the disclosure, a financial
38 institution shall not disclose either the request or its response, to
39 an owner of the account or to any other person, except the officers
40 and employees of the financial institution who are involved in

1 responding to the request and to attorneys, employees of the local
2 child support agencies, auditors, and regulatory authorities who
3 have a need to know in order to perform their duties, and except
4 as disclosure may be required by legal process.

5 (5) No financial institution, or any officer, employee, or agent
6 thereof, shall be liable to any person for (A) disclosing information
7 in response to a request pursuant to this subdivision, (B) failing to
8 notify the owner of an account, or complying with a request under
9 this paragraph not to disclose to the owner, the request or disclosure
10 under this subdivision, or (C) failing to discover any account owned
11 by the person named in the request pursuant to a computerized
12 search of the records of the financial institution.

13 (6) The local child support agency may request information
14 pursuant to this subdivision only when the local child support
15 agency has received at least one of the following types of physical
16 evidence:

17 (A) Any of the following, dated within the last three years:

18 (i) Form 599.

19 (ii) Form 1099.

20 (iii) A bank statement.

21 (iv) A check.

22 (v) A bank passbook.

23 (vi) A deposit slip.

24 (vii) A copy of a federal or state income tax return.

25 (viii) A debit or credit advice.

26 (ix) Correspondence that identifies the child support obligor by
27 name, the bank, and the account number.

28 (x) Correspondence that identifies the child support obligor by
29 name, the bank, and the banking services related to the account of
30 the obligor.

31 (xi) An asset identification report from a federal agency.

32 (B) A sworn declaration of the custodial parent during the 12
33 months immediately preceding the request that the person named
34 in the request has had or may have had an account at an office or
35 branch of the financial institution to which the request is made.

36 (7) Information obtained by a local child support agency
37 pursuant to this subdivision shall be used only for purposes that
38 are directly connected with the administration of the duties of the
39 local child support agency pursuant to Section 17400 of the Family
40 Code.

1 (m) (1) As provided in paragraph (1) of subdivision (c) of
2 Section 666 of Title 42 of the United States Code, upon receipt of
3 an administrative subpoena on the current federally approved
4 interstate child support enforcement form, as approved by the
5 federal Office of Management and Budget, a financial institution
6 shall provide the information or documents requested by the
7 administrative subpoena.

8 (2) The administrative subpoena shall refer to the current federal
9 Office of Management and Budget control number and be signed
10 by a person who states that he or she is an authorized agent of a
11 state or county agency responsible for implementing the child
12 support enforcement program set forth in Part D (commencing
13 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
14 United States Code. A financial institution may rely on the
15 statements made in the subpoena and has no duty to inquire into
16 the truth of any statement in the subpoena.

17 (3) If the person who signs the administrative subpoena directs
18 a financial institution in writing not to disclose either the subpoena
19 or its response to any owner of an account covered by the subpoena,
20 the financial institution shall not disclose the subpoena or its
21 response to the owner.

22 (4) No financial institution, or any officer, employee, or agent
23 thereof, shall be liable to any person for (A) disclosing information
24 or providing documents in response to a subpoena pursuant to this
25 subdivision, (B) failing to notify any owner of an account covered
26 by the subpoena or complying with a request not to disclose to the
27 owner, the subpoena or disclosure under this subdivision, or (C)
28 failing to discover any account owned by the person named in the
29 subpoena pursuant to a computerized search of the records of the
30 financial institution.

31 (n) The dissemination of financial information and records
32 pursuant to any of the following:

33 (1) Compliance by a financial institution with the requirements
34 of Section 2892 of the Probate Code.

35 (2) Compliance by a financial institution with the requirements
36 of Section 2893 of the Probate Code.

37 (3) An order by a judge upon a written ex parte application by
38 a peace officer showing specific and articulable facts that there
39 are reasonable grounds to believe that the records or information
40 sought are relevant and material to an ongoing investigation of a

1 felony violation of Section 186.10 or of any felony subject to the
2 enhancement set forth in Section 186.11.

3 (A) The ex parte application shall specify with particularity the
4 records to be produced, which shall be only those of the individual
5 or individuals who are the subject of the criminal investigation.

6 (B) The ex parte application and any subsequent judicial order
7 shall be open to the public as a judicial record unless ordered sealed
8 by the court, for a period of 60 days. The sealing of these records
9 may be extended for 60-day periods upon a showing to the court
10 that it is necessary for the continuance of the investigation.
11 Sixty-day extensions may continue for up to one year or until
12 termination of the investigation of the individual or individuals,
13 whichever is sooner.

14 (C) The records ordered to be produced shall be returned to the
15 peace officer applicant or his or her designee within a reasonable
16 time period after service of the order upon the financial institution.

17 (D) Nothing in this subdivision shall preclude the financial
18 institution from notifying a customer of the receipt of the order
19 for production of records unless a court orders the financial
20 institution to withhold notification to the customer upon a finding
21 that the notice would impede the investigation.

22 (E) Where a court has made an order pursuant to this paragraph
23 to withhold notification to the customer under this paragraph, the
24 peace officer or law enforcement agency who obtained the financial
25 information shall notify the customer by delivering a copy of the
26 ex parte order to the customer within 10 days of the termination
27 of the investigation.

28 (4) *An order by a judge issued pursuant to subdivision (c) of*
29 *Section 532f of the Penal Code.*

30 ~~(4)~~

31 (5) No financial institution, or any officer, employee, or agent
32 thereof, shall be liable to any person for any of the following:

33 (A) Disclosing information to a probate court pursuant to
34 Sections 2892 and 2893.

35 (B) Disclosing information in response to a court order pursuant
36 to paragraph (3).

37 (C) Complying with a court order under this subdivision not to
38 disclose to the customer, the order, or the dissemination of
39 information pursuant to the court order.

1 (o) Disclosure by a financial institution to a peace officer, as
2 defined in Section 830.1 of the Penal Code, pursuant to the
3 following:

4 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
5 Civil Code, provided that the financial institution has first complied
6 with the requirements of paragraph (2) of subdivision (a) and
7 subdivision (b) of Section 1748.95 of the Civil Code.

8 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
9 Financial Code, provided that the financial institution has first
10 complied with the requirements of paragraph (2) of subdivision
11 (a) and subdivision (b) of Section 4002 of the Financial Code.

12 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
13 Financial Code, provided that any financial institution that is a
14 finance lender has first complied with the requirements of
15 paragraph (2) of subdivision (a) and subdivision (b) of Section
16 22470 of the Financial Code.

17 (p) When the governing board of the Public Employees'
18 Retirement System or the State Teachers' Retirement System
19 certifies in writing to a financial institution that a benefit recipient
20 has died and that transfers to the benefit recipient's account at the
21 financial institution from the retirement system occurred after the
22 benefit recipient's date of death, the financial institution shall
23 furnish the retirement system with the name and address of any
24 coowner, cosigner, or any other person who had access to the funds
25 in the account following the date of the benefit recipient's death,
26 or if the account has been closed, the name and address of the
27 person who closed the account.

28 (q) When the retirement board of a retirement system established
29 under the County Employees Retirement Law of 1937 certifies in
30 writing to a financial institution that a retired member or the
31 beneficiary of a retired member has died and that transfers to the
32 account of the retired member or beneficiary of a retired member
33 at the financial institution from the retirement system occurred
34 after the date of death of the retired member or beneficiary of a
35 retired member, the financial institution shall furnish the retirement
36 system with the name and address of any coowner, cosigner, or
37 any other person who had access to the funds in the account
38 following the date of death of the retired member or beneficiary
39 of a retired member, or if the account has been closed, the name
40 and address of the person who closed the account.

1 (r) When the Franchise Tax Board certifies in writing to a
2 financial institution that (1) a taxpayer filed a tax return that
3 authorized a direct deposit refund with an incorrect financial
4 institution account or routing number that resulted in all or a
5 portion of the refund not being received, directly or indirectly, by
6 the taxpayer; (2) the direct deposit refund was not returned to the
7 Franchise Tax Board; and (3) the refund was deposited directly
8 on a specified date into the account of an accountholder of the
9 financial institution who was not entitled to receive the refund,
10 then the financial institution shall furnish to the Franchise Tax
11 Board the name and address of any coowner, cosigner, or any other
12 person who had access to the funds in the account following the
13 date of direct deposit refund, or if the account has been closed, the
14 name and address of the person who closed the account.

15 *SEC. 2. Section 7480 of the Government Code, as amended by*
16 *Section 30 of Chapter 697 of the Statutes of 2010, is amended to*
17 *read:*

18 7480. Nothing in this chapter shall prohibit any of the
19 following:

20 (a) The dissemination of any financial information that is not
21 identified with, or identifiable as being derived from, the financial
22 records of a particular customer.

23 (b) When any police or sheriff's department or district attorney
24 in this state certifies to a bank, credit union, or savings association
25 in writing that a crime report has been filed that involves the
26 alleged fraudulent use of drafts, checks, access cards, or other
27 orders drawn upon any bank, credit union, or savings association
28 in this state, the police or sheriff's department or district attorney,
29 a county adult protective services office when investigating the
30 financial abuse of an elder or dependent adult, or a long-term care
31 ombudsman when investigating the financial abuse of an elder or
32 dependent adult, may request a bank, credit union, or savings
33 association to furnish, and a bank, credit union, or savings
34 association shall furnish, a statement setting forth the following
35 information with respect to a customer account specified by the
36 requesting party for a period 30 days prior to, and up to 30 days
37 following, the date of occurrence of the alleged illegal act involving
38 the account:

39 (1) The number of items dishonored.

40 (2) The number of items paid that created overdrafts.

1 (3) The dollar volume of the dishonored items and items paid
2 which created overdrafts and a statement explaining any credit
3 arrangement between the bank, credit union, or savings association
4 and customer to pay overdrafts.

5 (4) The dates and amounts of deposits and debits and the account
6 balance on these dates.

7 (5) A copy of the signature card, including the signature and
8 any addresses appearing on a customer's signature card.

9 (6) The date the account opened and, if applicable, the date the
10 account closed.

11 (7) Surveillance photographs and video recordings of persons
12 accessing the crime victim's financial account via an automated
13 teller machine (ATM) or from within the financial institution for
14 dates on which illegal acts involving the account were alleged to
15 have occurred. Nothing in this paragraph does any of the following:

16 (A) Requires a financial institution to produce a photograph or
17 video recording if it does not possess the photograph or video
18 recording.

19 (B) Affects any existing civil immunities as provided in Section
20 47 of the Civil Code or any other provision of law.

21 (8) A bank, credit union, or savings association that provides
22 the requesting party with copies of one or more complete account
23 statements prepared in the regular course of business shall be
24 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

25 (c) When any police or sheriff's department or district attorney
26 in this state certifies to a bank, credit union, or savings association
27 in writing that a crime report has been filed that involves the
28 alleged fraudulent use of drafts, checks, access cards, or other
29 orders drawn upon any bank, credit union, or savings association
30 doing business in this state, the police or sheriff's department or
31 district attorney, a county adult protective services office when
32 investigating the financial abuse of an elder or dependent adult,
33 or a long-term care ombudsman when investigating the financial
34 abuse of an elder or dependent adult, may request, with the consent
35 of the accountholder, the bank, credit union, or savings association
36 to furnish, and the bank, credit union, or savings association shall
37 furnish, a statement setting forth the following information with
38 respect to a customer account specified by the requesting party for
39 a period 30 days prior to, and up to 30 days following, the date of
40 occurrence of the alleged illegal act involving the account:

- 1 (1) The number of items dishonored.
- 2 (2) The number of items paid that created overdrafts.
- 3 (3) The dollar volume of the dishonored items and items paid
4 which created overdrafts and a statement explaining any credit
5 arrangement between the bank, credit union, or savings association
6 and customer to pay overdrafts.
- 7 (4) The dates and amounts of deposits and debits and the account
8 balance on these dates.
- 9 (5) A copy of the signature card, including the signature and
10 any addresses appearing on a customer's signature card.
- 11 (6) The date the account opened and, if applicable, the date the
12 account closed.
- 13 (7) Surveillance photographs and video recordings of persons
14 accessing the crime victim's financial account via an automated
15 teller machine (ATM) or from within the financial institution for
16 dates on which illegal acts involving this account were alleged to
17 have occurred. Nothing in this paragraph does any of the following:
18 (A) Requires a financial institution to produce a photograph or
19 video recording if it does not possess the photograph or video
20 recording.
21 (B) Affects any existing civil immunities as provided in Section
22 47 of the Civil Code or any other provision of law.
- 23 (8) A bank, credit union, or savings association doing business
24 in this state that provides the requesting party with copies of one
25 or more complete account statements prepared in the regular course
26 of business shall be deemed to be in compliance with paragraphs
27 (1), (2), (3), and (4).
- 28 (d) For purposes of subdivision (c), consent of the accountholder
29 shall be satisfied if an accountholder provides to the financial
30 institution and the person or entity seeking disclosure, a signed
31 and dated statement containing all of the following:
32 (1) Authorization of the disclosure for the period specified in
33 subdivision (c).
34 (2) The name of the agency or department to which disclosure
35 is authorized and, if applicable, the statutory purpose for which
36 the information is to be obtained.
37 (3) A description of the financial records that are authorized to
38 be disclosed.
- 39 (e) (1) The Attorney General, a supervisory agency, the
40 Franchise Tax Board, the State Board of Equalization, the

1 Employment Development Department, the Controller or an
2 inheritance tax referee when administering the Prohibition of Gift
3 and Death Taxes (Part 8 (commencing with Section 13301) of
4 Division 2 of the Revenue and Taxation Code), a police or sheriff's
5 department or district attorney, a county adult protective services
6 office when investigating the financial abuse of an elder or
7 dependent adult, a long-term care ombudsman when investigating
8 the financial abuse of an elder or dependent adult, a county welfare
9 department when investigating welfare fraud, a county
10 auditor-controller or director of finance when investigating fraud
11 against the county, or the Department of Corporations when
12 conducting investigations in connection with the enforcement of
13 laws administered by the Commissioner of Corporations, from
14 requesting of an office or branch of a financial institution, and the
15 office or branch from responding to a request, as to whether a
16 person has an account or accounts at that office or branch and, if
17 so, any identifying numbers of the account or accounts.

18 (2) No additional information beyond that specified in this
19 section shall be released to a county welfare department without
20 either the accountholder's written consent or a judicial writ, search
21 warrant, subpoena, or other judicial order.

22 (3) A county auditor-controller or director of finance who
23 unlawfully discloses information he or she is authorized to request
24 under this subdivision is guilty of the unlawful disclosure of
25 confidential data, a misdemeanor, which shall be punishable as
26 set forth in Section 7485.

27 (f) The examination by, or disclosure to, any supervisory agency
28 of financial records that relate solely to the exercise of its
29 supervisory function. The scope of an agency's supervisory
30 function shall be determined by reference to statutes that grant
31 authority to examine, audit, or require reports of financial records
32 or financial institutions as follows:

33 (1) With respect to the Commissioner of Financial Institutions
34 by reference to Division 1 (commencing with Section 99), Division
35 1.5 (commencing with Section 4800), Division 2 (commencing
36 with Section 5000), Division 5 (commencing with Section 14000),
37 Division 7 (commencing with Section 18000), Division 15
38 (commencing with Section 31000), and Division 16 (commencing
39 with Section 33000), of the Financial Code.

1 (2) With respect to the Controller by reference to Title 10
2 (commencing with Section 1300) of Part 3 of the Code of Civil
3 Procedure.

4 (3) With respect to the Administrator of Local Agency Security
5 by reference to Article 2 (commencing with Section 53630) of
6 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
7 Code.

8 (g) The disclosure to the Franchise Tax Board of (1) the amount
9 of any security interest that a financial institution has in a specified
10 asset of a customer or (2) financial records in connection with the
11 filing or audit of a tax return or tax information return that are
12 required to be filed by the financial institution pursuant to Part 10
13 (commencing with Section 17001), Part 11 (commencing with
14 Section 23001), or Part 18 (commencing with Section 38001), of
15 the Revenue and Taxation Code.

16 (h) The disclosure to the State Board of Equalization of any of
17 the following:

18 (1) The information required by Sections 6702, 6703, 8954,
19 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
20 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
21 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
22 Revenue and Taxation Code.

23 (2) The financial records in connection with the filing or audit
24 of a tax return required to be filed by the financial institution
25 pursuant to Part 1 (commencing with Section 6001), Part 2
26 (commencing with Section 7301), Part 3 (commencing with Section
27 8601), Part 13 (commencing with Section 30001), Part 14
28 (commencing with Section 32001), and Part 17 (commencing with
29 Section 37001), of Division 2 of the Revenue and Taxation Code.

30 (3) The amount of any security interest a financial institution
31 has in a specified asset of a customer, if the inquiry is directed to
32 the branch or office where the interest is held.

33 (i) The disclosure to the Controller of the information required
34 by Section 7853 of the Revenue and Taxation Code.

35 (j) The disclosure to the Employment Development Department
36 of the amount of any security interest a financial institution has in
37 a specified asset of a customer, if the inquiry is directed to the
38 branch or office where the interest is held.

39 (k) The disclosure by a construction lender, as defined in Section
40 8006 of the Civil Code, to the Registrar of Contractors, of

1 information concerning the making of progress payments to a
2 prime contractor requested by the registrar in connection with an
3 investigation under Section 7108.5 of the Business and Professions
4 Code.

5 (l) Upon receipt of a written request from a local child support
6 agency referring to a support order pursuant to Section 17400 of
7 the Family Code, a financial institution shall disclose the following
8 information concerning the account or the person named in the
9 request, whom the local child support agency shall identify,
10 whenever possible, by social security number:

11 (1) If the request states the identifying number of an account at
12 a financial institution, the name of each owner of the account.

13 (2) Each account maintained by the person at the branch to
14 which the request is delivered, and, if the branch is able to make
15 a computerized search, each account maintained by the person at
16 any other branch of the financial institution located in this state.

17 (3) For each account disclosed pursuant to paragraphs (1) and
18 (2), the account number, current balance, street address of the
19 branch where the account is maintained, and, to the extent available
20 through the branch's computerized search, the name and address
21 of any other person listed as an owner.

22 (4) Whenever the request prohibits the disclosure, a financial
23 institution shall not disclose either the request or its response, to
24 an owner of the account or to any other person, except the officers
25 and employees of the financial institution who are involved in
26 responding to the request and to attorneys, employees of the local
27 child support agencies, auditors, and regulatory authorities who
28 have a need to know in order to perform their duties, and except
29 as disclosure may be required by legal process.

30 (5) No financial institution, or any officer, employee, or agent
31 thereof, shall be liable to any person for (A) disclosing information
32 in response to a request pursuant to this subdivision, (B) failing to
33 notify the owner of an account, or complying with a request under
34 this paragraph not to disclose to the owner, the request or disclosure
35 under this subdivision, or (C) failing to discover any account owned
36 by the person named in the request pursuant to a computerized
37 search of the records of the financial institution.

38 (6) The local child support agency may request information
39 pursuant to this subdivision only when the local child support

1 agency has received at least one of the following types of physical
2 evidence:

3 (A) Any of the following, dated within the last three years:

4 (i) Form 599.

5 (ii) Form 1099.

6 (iii) A bank statement.

7 (iv) A check.

8 (v) A bank passbook.

9 (vi) A deposit slip.

10 (vii) A copy of a federal or state income tax return.

11 (viii) A debit or credit advice.

12 (ix) Correspondence that identifies the child support obligor by
13 name, the bank, and the account number.

14 (x) Correspondence that identifies the child support obligor by
15 name, the bank, and the banking services related to the account of
16 the obligor.

17 (xi) An asset identification report from a federal agency.

18 (B) A sworn declaration of the custodial parent during the 12
19 months immediately preceding the request that the person named
20 in the request has had or may have had an account at an office or
21 branch of the financial institution to which the request is made.

22 (7) Information obtained by a local child support agency
23 pursuant to this subdivision shall be used only for purposes that
24 are directly connected with the administration of the duties of the
25 local child support agency pursuant to Section 17400 of the Family
26 Code.

27 (m) (1) As provided in paragraph (1) of subdivision (c) of
28 Section 666 of Title 42 of the United States Code, upon receipt of
29 an administrative subpoena on the current federally approved
30 interstate child support enforcement form, as approved by the
31 federal Office of Management and Budget, a financial institution
32 shall provide the information or documents requested by the
33 administrative subpoena.

34 (2) The administrative subpoena shall refer to the current federal
35 Office of Management and Budget control number and be signed
36 by a person who states that he or she is an authorized agent of a
37 state or county agency responsible for implementing the child
38 support enforcement program set forth in Part D (commencing
39 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
40 United States Code. A financial institution may rely on the

1 statements made in the subpoena and has no duty to inquire into
2 the truth of any statement in the subpoena.

3 (3) If the person who signs the administrative subpoena directs
4 a financial institution in writing not to disclose either the subpoena
5 or its response to any owner of an account covered by the subpoena,
6 the financial institution shall not disclose the subpoena or its
7 response to the owner.

8 (4) No financial institution, or any officer, employee, or agent
9 thereof, shall be liable to any person for (A) disclosing information
10 or providing documents in response to a subpoena pursuant to this
11 subdivision, (B) failing to notify any owner of an account covered
12 by the subpoena or complying with a request not to disclose to the
13 owner, the subpoena or disclosure under this subdivision, or (C)
14 failing to discover any account owned by the person named in the
15 subpoena pursuant to a computerized search of the records of the
16 financial institution.

17 (n) The dissemination of financial information and records
18 pursuant to any of the following:

19 (1) Compliance by a financial institution with the requirements
20 of Section 2892 of the Probate Code.

21 (2) Compliance by a financial institution with the requirements
22 of Section 2893 of the Probate Code.

23 (3) An order by a judge upon a written ex parte application by
24 a peace officer showing specific and articulable facts that there
25 are reasonable grounds to believe that the records or information
26 sought are relevant and material to an ongoing investigation of a
27 felony violation of Section 186.10 or of any felony subject to the
28 enhancement set forth in Section 186.11.

29 (A) The ex parte application shall specify with particularity the
30 records to be produced, which shall be only those of the individual
31 or individuals who are the subject of the criminal investigation.

32 (B) The ex parte application and any subsequent judicial order
33 shall be open to the public as a judicial record unless ordered sealed
34 by the court, for a period of 60 days. The sealing of these records
35 may be extended for 60-day periods upon a showing to the court
36 that it is necessary for the continuance of the investigation.
37 Sixty-day extensions may continue for up to one year or until
38 termination of the investigation of the individual or individuals,
39 whichever is sooner.

1 (C) The records ordered to be produced shall be returned to the
2 peace officer applicant or his or her designee within a reasonable
3 time period after service of the order upon the financial institution.

4 (D) Nothing in this subdivision shall preclude the financial
5 institution from notifying a customer of the receipt of the order
6 for production of records unless a court orders the financial
7 institution to withhold notification to the customer upon a finding
8 that the notice would impede the investigation.

9 (E) Where a court has made an order pursuant to this paragraph
10 to withhold notification to the customer under this paragraph, the
11 peace officer or law enforcement agency who obtained the financial
12 information shall notify the customer by delivering a copy of the
13 ex parte order to the customer within 10 days of the termination
14 of the investigation.

15 *(4) An order by a judge issued pursuant to subdivision (c) of*
16 *Section 532f of the Penal Code.*

17 ~~(4)~~

18 (5) No financial institution, or any officer, employee, or agent
19 thereof, shall be liable to any person for any of the following:

20 (A) Disclosing information to a probate court pursuant to
21 Sections 2892 and 2893.

22 (B) Disclosing information in response to a court order pursuant
23 to paragraph (3).

24 (C) Complying with a court order under this subdivision not to
25 disclose to the customer, the order, or the dissemination of
26 information pursuant to the court order.

27 (o) Disclosure by a financial institution to a peace officer, as
28 defined in Section 830.1 of the Penal Code, pursuant to the
29 following:

30 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
31 Civil Code, provided that the financial institution has first complied
32 with the requirements of paragraph (2) of subdivision (a) and
33 subdivision (b) of Section 1748.95 of the Civil Code.

34 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
35 Financial Code, provided that the financial institution has first
36 complied with the requirements of paragraph (2) of subdivision
37 (a) and subdivision (b) of Section 4002 of the Financial Code.

38 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
39 Financial Code, provided that any financial institution that is a
40 finance lender has first complied with the requirements of

1 paragraph (2) of subdivision (a) and subdivision (b) of Section
2 22470 of the Financial Code.

3 (p) When the governing board of the Public Employees'
4 Retirement System or the State Teachers' Retirement System
5 certifies in writing to a financial institution that a benefit recipient
6 has died and that transfers to the benefit recipient's account at the
7 financial institution from the retirement system occurred after the
8 benefit recipient's date of death, the financial institution shall
9 furnish the retirement system with the name and address of any
10 coowner, cosigner, or any other person who had access to the funds
11 in the account following the date of the benefit recipient's death,
12 or if the account has been closed, the name and address of the
13 person who closed the account.

14 (q) When the retirement board of a retirement system established
15 under the County Employees Retirement Law of 1937 certifies in
16 writing to a financial institution that a retired member or the
17 beneficiary of a retired member has died and that transfers to the
18 account of the retired member or beneficiary of a retired member
19 at the financial institution from the retirement system occurred
20 after the date of death of the retired member or beneficiary of a
21 retired member, the financial institution shall furnish the retirement
22 system with the name and address of any coowner, cosigner, or
23 any other person who had access to the funds in the account
24 following the date of death of the retired member or beneficiary
25 of a retired member, or if the account has been closed, the name
26 and address of the person who closed the account.

27 (r) When the Franchise Tax Board certifies in writing to a
28 financial institution that (1) a taxpayer filed a tax return that
29 authorized a direct deposit refund with an incorrect financial
30 institution account or routing number that resulted in all or a
31 portion of the refund not being received, directly or indirectly, by
32 the taxpayer; (2) the direct deposit refund was not returned to the
33 Franchise Tax Board; and (3) the refund was deposited directly
34 on a specified date into the account of an accountholder of the
35 financial institution who was not entitled to receive the refund,
36 then the financial institution shall furnish to the Franchise Tax
37 Board the name and address of any coowner, cosigner, or any other
38 person who had access to the funds in the account following the
39 date of direct deposit refund, or if the account has been closed, the
40 name and address of the person who closed the account.

1 SECTION 1.

2 SEC. 3. Section 15202.1 of the Government Code is amended
3 to read:

4 15202.1. (a) If the venue for trial of a homicide case has been
5 changed from the county which is eligible for reimbursement under
6 Section 15202 to a location more than 60 miles from the county
7 seat of that county, and the district attorney of that county has
8 entered into a contract with an attorney to try the case or an
9 investigator to assist in the trial of the case, the Controller shall
10 reimburse the county for the actual costs of the attorney or
11 investigator under this section, at an hourly rate not to exceed the
12 hourly rate charged state agencies by the Attorney General for
13 similar attorney services or investigators, without further showing
14 of justification. Nothing in this section shall permit the
15 reimbursement of costs for travel in excess of 1,000 miles on any
16 single round trip, without the prior approval of the Attorney
17 General.

18 (b) (1) This section shall apply to any homicide cases in which
19 a final judgment was entered on or after January 1, 1990.

20 (2) The limitation provided in this subdivision shall not apply
21 to Sierra County. Instead, the County of Sierra may apply to the
22 Controller for reimbursement pursuant to subdivision (a) for its
23 costs incident to the prosecution of the homicide trial of People v.
24 Corjasso.

25 SEC. 4. Section 70372 of the Government Code is amended to
26 read:

27 70372. (a) (1) Except as otherwise provided ~~in subdivision~~
28 ~~(b) of Section 70375 and~~ in this article, there shall be levied a state
29 court construction penalty, in the amount of five dollars (\$5) for
30 every ten dollars (\$10), or part of ten dollars (\$10), upon every
31 fine, penalty, or forfeiture imposed and collected by the courts for
32 all criminal offenses, including, but not limited to, all offenses
33 involving a violation of a section of the Fish and Game Code, the
34 Health and Safety Code, or the Vehicle Code or any local ordinance
35 adopted pursuant to the Vehicle Code. This penalty is in addition
36 to any other state or local penalty, including, but not limited to,
37 the penalty provided by Section 1464 of the Penal Code and
38 Section 76000.

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

1 ~~(3)~~

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

3 (A) Any restitution fine.

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

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

8 (D) The state surcharge authorized by Section 1465.7 of the
9 Penal Code.

10 ~~(4)~~

11 (3) Any bail schedule adopted pursuant to Section 1269b of the
12 Penal Code or adopted by the Judicial Council pursuant to Section
13 40310 of the Vehicle Code may include the necessary amount to
14 pay the penalty established by this section, the penalties authorized
15 by Section 1464 of the Penal Code and Chapter 12 (commencing
16 with Section 76000) of Title 8, and the surcharge authorized by
17 Section 1465.7 of the Penal Code for all matters where a personal
18 appearance is not mandatory and the bail is posted primarily to
19 guarantee payment of the fine. After a determination by the court
20 of the amount due, the clerk of the court shall collect the penalty
21 and transmit it immediately to the county treasury and the county
22 treasurer shall transmit these sums as provided in subdivision (f).

23 (b) In addition to the penalty provided by subdivision (a), for
24 every parking offense where a parking penalty, fine, or forfeiture
25 is imposed, an added state court construction penalty of four dollars
26 and fifty cents (\$4.50) shall be included in the total penalty, fine,
27 or forfeiture. These moneys shall be taken from fines and
28 forfeitures deposited with the county treasurer prior to any division
29 pursuant to Section 1462.3 or 1463.009 of the Penal Code. In those
30 cities, districts, or other issuing agencies which elect to accept
31 parking penalties, and otherwise process parking violations
32 pursuant to Article 3 (commencing with Section 40200) of Chapter
33 1 of Division 17 of the Vehicle Code, that city, district, or issuing
34 agency shall observe the increased bail amounts as established by
35 the court reflecting the added penalty provided for by this
36 subdivision. Each agency that elects to process parking violations
37 shall pay to the county treasurer four dollars and fifty cents (\$4.50)
38 for the parking penalty imposed by this subdivision for each
39 violation that is not filed in court. Those payments to the county
40 treasurer shall be made monthly, and the county treasurer shall

1 transmit these sums as provided in paragraph (2) of subdivision
2 (f). In the event these payments were deposited in a local
3 courthouse construction fund and expended pursuant to the
4 provisions of Chapter 592 of the Statutes of 2003, no county or
5 processing agency shall be liable for the failure to transmit the
6 payments to the Controller during the 2008 calendar year.

7 (c) If multiple offenses are involved, the state court construction
8 penalty under subdivision (a) shall be based upon the total fine or
9 bail for each case. If a fine is suspended, in whole or in part, the
10 state court construction penalty under subdivision (a) shall be
11 reduced in proportion to the suspension.

12 (d) If any deposited bail is made for an offense to which this
13 section applies, and for which a court appearance is not mandatory,
14 the person making the deposit shall also deposit a sufficient amount
15 to include the state court construction penalty prescribed by
16 subdivision (a) for forfeited bail. If bail is returned, the state court
17 construction penalty paid thereon pursuant to subdivision (a) shall
18 also be returned.

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

24 (f) (1) Within 45 days after the end of the month that moneys
25 are deposited in the county treasury pursuant to subdivision (a),
26 the county treasurer shall transmit the moneys to the Controller,
27 to be deposited as follows:

28 (A) The total to be deposited pursuant to subdivision (a) shall
29 be multiplied by a fraction as follows:

30 (i) The numerator is the amount imposed as of January 1, 1998,
31 as an additional penalty on every ten dollars (\$10), or part of ten
32 dollars (\$10), upon every fine, penalty, or forfeiture, if any, for
33 deposit into the local courthouse construction fund in that county
34 established pursuant to Sections 76000 and 76100. The numerator
35 shall be expressed in whole dollars and fractions of a dollar.

36 (ii) The denominator is five dollars (\$5).

37 (B) The resulting amount shall be deposited in the Immediate
38 and Critical Needs Account of the State Court Facilities
39 Construction Fund, established in Section 70371.5.

1 (C) The remaining amount of the deposit shall be deposited in
2 the State Court Facilities Construction Fund.

3 (2) Within 45 days after the end of the month that moneys are
4 deposited in the county treasury pursuant to subdivision (b), the
5 county treasurer shall transmit the moneys to the Controller to be
6 deposited as follows: one-third of the total amount shall be
7 deposited in the State Court Facilities Construction Fund and
8 two-thirds of the total amount shall be deposited in the Immediate
9 and Critical Needs Account of the State Court Facilities
10 Construction Fund, established in Section 70371.5.

11 ~~SEC. 2.~~

12 *SEC. 5.* Section 466 of the Penal Code is amended to read:

13 466. Every person having upon him or her or in his or her
14 possession a picklock, crow, keybit, crowbar, screwdriver, vise
15 grip pliers, water-pump pliers, slidehammer, slim jim, tension bar,
16 lock pick gun, tubular lock pick, bump key, floor-safe door puller,
17 master key, ceramic or porcelain spark plug chips or pieces, or
18 other instrument or tool with intent feloniously to break or enter
19 into any building, railroad car, aircraft, or vessel, trailer coach, or
20 vehicle as defined in the Vehicle Code, or who shall knowingly
21 make or alter, or shall attempt to make or alter, any key or other
22 instrument named above so that the same will fit or open the lock
23 of a building, railroad car, aircraft, vessel, trailer coach, or vehicle
24 as defined in the Vehicle Code, without being requested to do so
25 by some person having the right to open the same, or who shall
26 make, alter, or repair any instrument or thing, knowing or having
27 reason to believe that it is intended to be used in committing a
28 misdemeanor or felony, is guilty of a misdemeanor. Any of the
29 structures mentioned in Section 459 shall be deemed to be a
30 building within the meaning of this section.

31 ~~SEC. 3.~~

32 *SEC. 6.* Section 633.8 of the Penal Code is amended to read:

33 633.8. (a) It is the intent of the Legislature in enacting this
34 section to provide law enforcement with the ability to use electronic
35 amplifying or recording devices to eavesdrop on and record the
36 otherwise confidential oral communications of individuals within
37 a location when responding to an emergency situation that involves
38 the taking of a hostage or the barricading of a location. It is the
39 intent of the Legislature that eavesdropping on oral

1 communications pursuant to this section comply with paragraph
2 (7) of Section 2518 of Title 18 of the United States Code.

3 (b) Notwithstanding the provisions of this chapter, and in
4 accordance with federal law, a designated peace officer described
5 in subdivision (c) may use, or authorize the use of, an electronic
6 amplifying or recording device to eavesdrop on or record, or both,
7 any oral communication within a particular location in response
8 to an emergency situation involving the taking of a hostage or
9 hostages or the barricading of a location if all of the following
10 conditions are satisfied:

11 (1) The officer reasonably determines that an emergency
12 situation exists involving the immediate danger of death or serious
13 physical injury to any person, within the meaning of Section
14 2518(7)(a)(i) of Title 18 of the United States Code.

15 (2) The officer reasonably determines that the emergency
16 situation requires that the eavesdropping on oral communication
17 occur immediately.

18 (3) There are grounds upon which an order could be obtained
19 pursuant to Section 2516(2) of Title 18 of the United States Code
20 in regard to the offenses enumerated therein.

21 (c) Only a peace officer who has been designated by either a
22 district attorney in the county where the emergency exists, or by
23 the Attorney General to make the necessary determinations
24 pursuant to paragraphs (1), (2), and (3) of subdivision (b) may
25 make those determinations for purposes of this section.

26 (d) If the determination is made by a designated peace officer
27 described in subdivision (c) that an emergency situation exists, a
28 peace officer shall not be required to knock and announce his or
29 her presence before entering, installing, and using any electronic
30 amplifying or recording devices.

31 (e) If the determination is made by a designated peace officer
32 described in subdivision (c) that an emergency situation exists and
33 an eavesdropping device has been deployed, an application for an
34 order approving the eavesdropping shall be made within 48 hours
35 of the beginning of the eavesdropping and shall comply with the
36 requirements of Section 629.50. A court may grant an application
37 authorizing the use of electronic amplifying or recording devices
38 to eavesdrop on and record otherwise confidential oral
39 communications in barricade or hostage situations where there is
40 probable cause to believe that an individual is committing, has

1 committed, or is about to commit an offense listed in Section
2 2516(2) of Title 18 of the United States Code.

3 (f) The contents of any oral communications overheard pursuant
4 to this section shall be recorded on tape or other comparable device.
5 The recording of the contents shall be done so as to protect the
6 recording from editing or other alterations.

7 (g) For purposes of this section, a “barricading” occurs when a
8 person refuses to come out from a covered or enclosed position.
9 Barricading also occurs when a person is held against his or her
10 will and the captor has not made a demand.

11 (h) For purposes of this section, a “hostage situation” occurs
12 when a person is held against his or her will and the captor has
13 made a demand.

14 (i) A judge shall not grant an application made pursuant to this
15 section in anticipation that an emergency situation will arise. A
16 judge shall grant an application authorizing the use of electronic
17 amplifying or recording devices to eavesdrop on and record
18 otherwise confidential oral communications in barricade or hostage
19 situations where there is probable cause to believe that an
20 individual is committing, has committed, or is about to commit an
21 offense listed in Section 2516(2) of Title 18 of the United States
22 Code, and only if the peace officer has fully complied with the
23 requirements of this section. If an application is granted pursuant
24 to this section, an inventory shall be served pursuant to Section
25 629.68.

26 (j) This section does not require that a peace officer designated
27 pursuant to subdivision (c) undergo training pursuant to Section
28 629.94.

29 (k) A peace officer who has been designated pursuant to
30 subdivision (c) to use an eavesdropping device shall cease use of
31 the device upon the termination of the barricade or hostage
32 situation, or upon the denial by a judge of an application for an
33 order to approve the eavesdropping, whichever is earlier.

34 (l) Nothing in this section shall be deemed to affect the
35 admissibility or inadmissibility of evidence.

36 *SEC. 7. Section 904.7 of the Penal Code is amended to read:*

37 904.7. (a) Notwithstanding subdivision (a) of Section 904.6
38 or any other provision, in the County of San Bernardino, the
39 presiding judge of the superior court, or the judge appointed by
40 the presiding judge to supervise the grand jury, may, upon the

1 request of the Attorney General or the district attorney or upon his
2 or her own motion, order and direct the impanelment of an
3 additional civil grand jury pursuant to this section.

4 (b) The presiding judge or the judge appointed by the presiding
5 judge to supervise the grand jury shall select persons, at random,
6 from the list of trial jurors in civil and criminal cases and shall
7 examine them to determine if they are competent to serve as grand
8 jurors. When a sufficient number of competent persons have been
9 selected, they shall constitute an additional grand jury.

10 (c) Any additional civil grand jury that is impaneled pursuant
11 to this section may serve for a term as determined by the presiding
12 judge or the judge appointed by the presiding judge to supervise
13 the civil grand jury, but may be discharged at any time within the
14 set term by order of the presiding judge or the judge appointed by
15 the presiding judge to supervise the civil grand jury. In no event
16 shall more than one additional civil grand jury be impaneled
17 pursuant to this section at the same time.

18 (d) Whenever an additional civil grand jury is impaneled
19 pursuant to this section, it may inquire into matters of oversight,
20 conduct investigations, issue reports, and make recommendations,
21 except for any matters that the regular grand jury is inquiring into
22 at the time of its impanelment. Any additional civil grand jury
23 impaneled pursuant to this section shall not have jurisdiction to
24 issue indictments.

25 (e) It is the intent of the Legislature that, in the County of San
26 Bernardino, all persons qualified for jury service shall have an
27 equal opportunity to be considered for service as ~~criminal~~ grand
28 jurors within the county, and that they have an obligation to serve,
29 when summoned for that purpose. All persons selected for an
30 additional criminal grand jury shall be selected at random from a
31 source or sources reasonably representative of a cross section of
32 the population that is eligible for jury service in the county.

33 ~~SEC. 4.~~

34 *SEC. 8.* Section 992 of the Penal Code is amended to read:

35 992. (a) (1) In any case in which the defendant is charged
36 with a felony, the court shall require the defendant to provide a
37 right thumbprint on a form developed for this purpose. Unless the
38 court has obtained the thumbprint at an earlier proceeding, it shall
39 do so at the arraignment on the information or indictment, or upon
40 entry of a guilty or no contest plea under Section 859a. The

1 fingerprint form shall include the name and superior court case
2 number of the defendant, the date, and the printed name, position,
3 and badge or serial number of the court bailiff who imprints the
4 defendant's thumbprint. In the event the defendant is physically
5 unable to provide a right thumbprint, the defendant shall provide
6 a left thumbprint. In the event the defendant is physically unable
7 to provide a left thumbprint, the court shall make a determination
8 as to how the defendant might otherwise provide a suitable
9 identifying characteristic to be imprinted on the judgment of
10 conviction. The clerk shall note on the fingerprint form which
11 digit, if any, of the defendant's was imprinted thereon. In the event
12 that the defendant is convicted, this fingerprint form shall be
13 attached to the minute order reflecting the defendant's sentence.
14 The fingerprint form shall be permanently maintained in the
15 superior court file.

16 (2) This thumbprint or fingerprint shall not be used to create a
17 database. The Judicial Council shall develop a form to implement
18 this section.

19 (b) In the event that a county implements a countywide policy
20 in which every felony defendant's photograph and fingerprints are
21 permanently maintained in the superior court file, the presiding
22 judge of that county may elect, after consultation with the district
23 attorney, to continue compliance with this section.

24 ~~SEC. 5.~~

25 *SEC. 9.* Section 1181 of the Penal Code is amended to read:

26 1181. When a verdict has been rendered or a finding made
27 against the defendant, the court may, upon his or her application,
28 grant a new trial, in the following cases only:

29 (a) When the trial has been had in the defendant's absence
30 except in cases where the trial may lawfully proceed in the
31 defendant's absence.

32 (b) When the jury has received any evidence out of court, other
33 than that resulting from a view of the premises, or of personal
34 property.

35 (c) When the jury has been separated without leave of the court
36 after retiring to deliberate upon their verdict.

37 (d) When the jury has been guilty of any misconduct by which
38 a fair and due consideration of the case has been prevented.

39 (e) When the verdict has been decided by lot, or by any means
40 other than a fair expression of opinion on the part of all the jurors.

1 (f) When the court has misdirected the jury in a matter of law,
2 or has erred in the decision of any question of law arising during
3 the course of the trial.

4 (g) When the district attorney or other counsel prosecuting the
5 case has been guilty of prejudicial misconduct during the trial
6 thereof before a jury.

7 (h) When the verdict or finding is contrary to law or evidence,
8 but:

9 (1) If the evidence shows the defendant to be not guilty of the
10 degree of the crime of which he or she was convicted, but guilty
11 of a lesser degree thereof, or of a lesser crime included therein,
12 the court may modify the verdict, finding or judgment accordingly
13 without granting or ordering a new trial, and this power shall extend
14 to any court to which the cause may be appealed.

15 (2) In any case wherein authority is vested by statute in the trial
16 court or jury to recommend or determine as a part of its verdict or
17 finding the punishment to be imposed, the court may modify such
18 verdict or finding by imposing the lesser punishment without
19 granting or ordering a new trial, and this power shall extend to any
20 court to which the case may be appealed.

21 (i) When new evidence is discovered material to the defendant,
22 and which he or she could not, with reasonable diligence, have
23 discovered and produced at the trial. When a motion for a new
24 trial is made upon the ground of newly discovered evidence, the
25 defendant must produce at the hearing, in support thereof, the
26 affidavits of the witnesses by whom such evidence is expected to
27 be given, and if time is required by the defendant to procure such
28 affidavits, the court may postpone the hearing of the motion for
29 such length of time as, under all circumstances of the case, may
30 seem reasonable.

31 (j) When the right to a phonographic report has not been waived,
32 and when it is not possible to have a phonographic report of the
33 trial transcribed by a stenographic reporter as provided by law or
34 by rule because of the death or disability of a reporter who
35 participated as a stenographic reporter at the trial or because of
36 the loss or destruction, in whole or in substantial part, of the notes
37 of such reporter, the trial court or a judge, thereof, or the reviewing
38 court shall have power to set aside and vacate the judgment, order
39 or decree from which an appeal has been taken or is to be taken
40 and to order a new trial of the action or proceeding.

1 *SEC. 10. Section 1203.01 of the Penal Code is amended to*
2 *read:*

3 1203.01. (a) Immediately after judgment has been pronounced,
4 the judge and the district attorney, respectively, may cause to be
5 filed with the clerk of the court a brief statement of their views
6 respecting the person convicted or sentenced and the crime
7 committed, together with any reports the probation officer may
8 have filed relative to the prisoner. The judge and district attorney
9 shall cause those statements to be filed if no probation officer's
10 report has been filed. The attorney for the defendant and the law
11 enforcement agency that investigated the case may likewise file
12 with the clerk of the court statements of their views respecting the
13 defendant and the crime of which he or she was convicted.
14 Immediately after the filing of those statements and reports, the
15 clerk of the court shall mail a copy thereof, certified by that clerk,
16 with postage prepaid, addressed to the Department of Corrections
17 *and Rehabilitation* at the prison or other institution to which the
18 person convicted is delivered. ~~Within 60 days after judgment has~~
19 ~~been pronounced, the clerk shall mail a copy of the charging~~
20 ~~documents, the transcript of the proceedings at the time of the~~
21 ~~defendant's guilty plea, if the defendant pleaded guilty, and the~~
22 ~~transcript of the proceedings at the time of sentencing, with postage~~
23 ~~prepaid, to the prison or other institution to which the person~~
24 ~~convicted is delivered.~~ The clerk shall also mail a copy of any
25 statement submitted by the court, district attorney, or law
26 enforcement agency, pursuant to this section, with postage prepaid,
27 addressed to the attorney for the defendant, if any, and to the
28 defendant, in care of the Department of Corrections *and*
29 *Rehabilitation*, and a copy of any statement submitted by the
30 attorney for the defendant, with postage prepaid, shall be mailed
31 to the district attorney.

32 (b) *In all cases in which the judgment imposed includes a*
33 *sentence of death or an indeterminate term with or without the*
34 *possibility of parole, the clerk shall, within 60 days after judgment*
35 *has been pronounced, mail a copy of the charging documents, a*
36 *copy of waiver and plea forms, if any, the transcript of the*
37 *proceedings at the time of the defendant's guilty or nolo contendere*
38 *plea, if the defendant pleaded guilty or nolo contendere, and the*
39 *transcript of the proceedings at the time of sentencing, with postage*
40 *prepaid, to the prison or other institution to which the person*

1 *convicted is delivered. In all other cases, upon written request by*
2 *the department, the clerk shall mail, with postage prepaid to the*
3 *prison or other institution to which the person convicted is*
4 *delivered, a copy of the charging documents, a copy of the waiver*
5 *and plea forms, if any, the transcript of the proceedings at the time*
6 *of the defendant's guilty or nolo contendere plea, if the defendant*
7 *pleaded guilty or nolo contendere, and the transcript of the*
8 *proceedings at the time of sentencing.*

9 *SEC. 11. Section 1203.4 of the Penal Code, as amended by*
10 *Section 76 of Chapter 178 of the Statutes of 2010, is amended to*
11 *read:*

12 1203.4. (a) In any case in which a defendant has fulfilled the
13 conditions of probation for the entire period of probation, or has
14 been discharged prior to the termination of the period of probation,
15 or in any other case in which a court, in its discretion and the
16 interests of justice, determines that a defendant should be granted
17 the relief available under this section, the defendant shall, at any
18 time after the termination of the period of probation, if he or she
19 is not then serving a sentence for any offense, on probation for
20 any offense, or charged with the commission of any offense, be
21 permitted by the court to withdraw his or her plea of guilty or plea
22 of nolo contendere and enter a plea of not guilty; or, if he or she
23 has been convicted after a plea of not guilty, the court shall set
24 aside the verdict of guilty; and, in either case, the court shall
25 thereupon dismiss the accusations or information against the
26 defendant and except as noted below, he or she shall thereafter be
27 released from all penalties and disabilities resulting from the
28 offense of which he or she has been convicted, except as provided
29 in Section 13555 of the Vehicle Code. The probationer shall be
30 informed, in his or her probation papers, of this right and privilege
31 and his or her right, if any, to petition for a certificate of
32 rehabilitation and pardon. The probationer may make the
33 application and change of plea in person or by attorney, or by the
34 probation officer authorized in writing. However, in any subsequent
35 prosecution of the defendant for any other offense, the prior
36 conviction may be pleaded and proved and shall have the same
37 effect as if probation had not been granted or the accusation or
38 information dismissed. The order shall state, and the probationer
39 shall be informed, that the order does not relieve him or her of the
40 obligation to disclose the conviction in response to any direct

1 question contained in any questionnaire or application for public
2 office, for licensure by any state or local agency, or for contracting
3 with the California State Lottery.

4 Dismissal of an accusation or information pursuant to this section
5 does not permit a person to own, possess, or have in his or her
6 custody or control any firearm or prevent his or her conviction
7 under Chapter 2 (commencing with Section 29800) of Division 9
8 of Title 4 of Part 6.

9 Dismissal of an accusation or information underlying a
10 conviction pursuant to this section does not permit a person
11 prohibited from holding public office as a result of that conviction
12 to hold public office.

13 This subdivision shall apply to all applications for relief under
14 this section which are filed on or after November 23, 1970.

15 (b) Subdivision (a) of this section does not apply to any
16 misdemeanor that is within the provisions of ~~subdivision (b) of~~
17 ~~Section 42001~~ *Section 42002.1* of the Vehicle Code, to any
18 violation of subdivision (c) of Section 286, Section 288,
19 subdivision (c) of Section 288a, Section 288.5, or subdivision (j)
20 of Section 289, any felony conviction pursuant to subdivision (d)
21 of Section 261.5, or to any infraction.

22 (c) (1) Except as provided in paragraph (2), subdivision (a)
23 does not apply to a person who receives a notice to appear or is
24 otherwise charged with a violation of an offense described in
25 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
26 Code.

27 (2) If a defendant who was convicted of a violation listed in
28 paragraph (1) petitions the court, the court in its discretion and in
29 the interests of justice, may order the relief provided pursuant to
30 subdivision (a) to that defendant.

31 (d) A person who petitions for a change of plea or setting aside
32 of a verdict under this section may be required to reimburse the
33 court for the actual costs of services rendered, whether or not the
34 petition is granted and the records are sealed or expunged, at a rate
35 to be determined by the court not to exceed one hundred fifty
36 dollars (\$150), and to reimburse the county for the actual costs of
37 services rendered, whether or not the petition is granted and the
38 records are sealed or expunged, at a rate to be determined by the
39 county board of supervisors not to exceed one hundred fifty dollars
40 (\$150), and to reimburse any city for the actual costs of services

1 rendered, whether or not the petition is granted and the records are
2 sealed or expunged, at a rate to be determined by the city council
3 not to exceed one hundred fifty dollars (\$150). Ability to make
4 this reimbursement shall be determined by the court using the
5 standards set forth in paragraph (2) of subdivision (g) of Section
6 987.8 and shall not be a prerequisite to a person's eligibility under
7 this section. The court may order reimbursement in any case in
8 which the petitioner appears to have the ability to pay, without
9 undue hardship, all or any portion of the costs for services
10 established pursuant to this subdivision.

11 (e) Relief shall not be granted under this section unless the
12 prosecuting attorney has been given 15 days' notice of the petition
13 for relief. The probation officer shall notify the prosecuting attorney
14 when a petition is filed, pursuant to this section.

15 It shall be presumed that the prosecuting attorney has received
16 notice if proof of service is filed with the court.

17 (f) If, after receiving notice pursuant to subdivision (e), the
18 prosecuting attorney fails to appear and object to a petition for
19 dismissal, the prosecuting attorney may not move to set aside or
20 otherwise appeal the grant of that petition.

21 (g) Notwithstanding the above provisions or any other provision
22 of law, the Governor shall have the right to pardon a person
23 convicted of a violation of subdivision (c) of Section 286, Section
24 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
25 (j) of Section 289, if there are extraordinary circumstances.

26 *SEC. 12. Section 1203.4a of the Penal Code is amended to*
27 *read:*

28 1203.4a. (a) Every defendant convicted of a misdemeanor and
29 not granted probation, and every defendant convicted of an
30 infraction, shall, at any time after the lapse of one year from the
31 date of pronouncement of judgment, if he or she has fully complied
32 with and performed the sentence of the court, is not then serving
33 a sentence for any offense and is not under charge of commission
34 of any crime and has, since the pronouncement of judgment, lived
35 an honest and upright life and has conformed to and obeyed the
36 laws of the land, be permitted by the court to withdraw his or her
37 plea of guilty or nolo contendere and enter a plea of not guilty; or
38 if he or she has been convicted after a plea of not guilty, the court
39 shall set aside the verdict of guilty; and in either case the court
40 shall thereupon dismiss the accusatory pleading against the

1 defendant, who shall thereafter be released from all penalties and
2 disabilities resulting from the offense of which he or she has been
3 convicted, except as provided in Section 12021.1 of this code or
4 Section 13555 of the Vehicle Code. The defendant shall be
5 informed of the provisions of this section, either orally or in
6 writing, at the time he or she is sentenced. The defendant may
7 make an application and change of plea in person or by attorney,
8 or by the probation officer authorized in writing; provided, that in
9 any subsequent prosecution of the defendant for any other offense,
10 the prior conviction may be pleaded and proved and shall have the
11 same effect as if relief had not been granted pursuant to this section.

12 This subdivision applies to convictions which occurred before,
13 as well as those occurring after, the effective date of this section.

14 (b) Subdivision (a) does not apply to any misdemeanor falling
15 within the provisions of Section 42002.1 of the Vehicle Code, ~~or~~
16 to any infraction falling within the provisions of Section 42001 of
17 the Vehicle Code, *or to any local ordinance adopted pursuant to*
18 *the Vehicle Code.*

19 (c) A person who petitions for a dismissal of a charge under
20 this section may be required to reimburse the county and the court
21 for the cost of services rendered at a rate to be determined by the
22 county board of supervisors for the county and by the court for the
23 court, not to exceed sixty dollars (\$60), and to reimburse any city
24 for the cost of services rendered at a rate to be determined by the
25 city council not to exceed sixty dollars (\$60). Ability to make this
26 reimbursement shall be determined by the court using the standards
27 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
28 shall not be a prerequisite to a person's eligibility under this
29 section. The court may order reimbursement in any case in which
30 the petitioner appears to have the ability to pay, without undue
31 hardship, all or any portion of the cost for services established
32 pursuant to this subdivision.

33 (d) A petition for dismissal of an infraction pursuant to this
34 section shall be by written declaration, except upon a showing of
35 compelling need. Dismissal of an infraction shall not be granted
36 under this section unless the prosecuting attorney has been given
37 at least 15 days' notice of the petition for dismissal. It shall be
38 presumed that the prosecuting attorney has received notice if proof
39 of service is filed with the court.

1 (e) Any determination of amount made by a court under this
2 section shall be valid only if either (1) made under procedures
3 adopted by the Judicial Council or (2) approved by the Judicial
4 Council.

5 ~~SEC. 6.~~

6 *SEC. 13.* Section 1387 of the Penal Code is amended to read:

7 1387. (a) An order terminating an action pursuant to this
8 chapter, or Section 859b, 861, 871, or 995, is a bar to any other
9 prosecution for the same offense if it is a felony or if it is a
10 misdemeanor charged together with a felony and the action has
11 been previously terminated pursuant to this chapter, or Section
12 859b, 861, 871, or 995, or if it is a misdemeanor not charged
13 together with a felony, except in those felony cases, or those cases
14 where a misdemeanor is charged with a felony, where subsequent
15 to the dismissal of the felony or misdemeanor the judge or
16 magistrate finds any of the following:

17 (1) That substantial new evidence has been discovered by the
18 prosecution which would not have been known through the exercise
19 of due diligence at, or prior to, the time of termination of the action.

20 (2) That the termination of the action was the result of the direct
21 intimidation of a material witness, as shown by a preponderance
22 of the evidence.

23 (3) That the termination of the action was the result of the failure
24 to appear by the complaining witness, who had been personally
25 subpoenaed in a prosecution arising under subdivision (e) of
26 Section 243 or Section 262, 273.5, or 273.6. This paragraph shall
27 apply only within six months of the original dismissal of the action,
28 and may be invoked only once in each action. Nothing in this
29 section shall preclude a defendant from being eligible for diversion.

30 (b) Notwithstanding subdivision (a), an order terminating an
31 action pursuant to this chapter is not a bar to another prosecution
32 for the same offense if it is a misdemeanor charging an offense
33 based on an act of domestic violence, as defined in subdivisions
34 (a) and (b) of Section 13700, and the termination of the action was
35 the result of the failure to appear by the complaining witness, who
36 had been personally subpoenaed. This subdivision shall apply only
37 within six months of the original dismissal of the action, and may
38 be invoked only once in each action. Nothing in this subdivision
39 shall preclude a defendant from being eligible for diversion.

1 (c) An order terminating an action is not a bar to prosecution
2 if a complaint is dismissed before the commencement of a
3 preliminary hearing in favor of an indictment filed pursuant to
4 Section 944 or an indictment is based upon the same subject matter
5 as charged in a dismissed complaint, information, or indictment.

6 (d) If the previous termination was pursuant to Section 859b,
7 861, 871, or 995, the subsequent order terminating an action is not
8 a bar to prosecution if:

9 (1) Good cause is shown why the preliminary examination was
10 not held within 60 days from the date of arraignment or plea.

11 (2) The motion pursuant to Section 995 was granted because of
12 any of the following reasons:

13 (A) Present insanity of the defendant.

14 (B) A lack of counsel after the defendant elected to represent
15 himself or herself rather than being represented by appointed
16 counsel.

17 (C) Ineffective assistance of counsel.

18 (D) Conflict of interest of defense counsel.

19 (E) Violation of time deadlines based upon unavailability of
20 defense counsel.

21 (F) Defendant's motion to withdraw a waiver of the preliminary
22 examination.

23 (3) The motion pursuant to Section 995 was granted after
24 dismissal by the magistrate of the action pursuant to Section 871
25 and was recharged pursuant to Section 739.

26 ~~SEC. 7.~~

27 *SEC. 14.* Section 1466 of the Penal Code is amended to read:

28 1466. An appeal may be taken from a judgment or order, in an
29 infraction or misdemeanor case, to the appellate division of the
30 superior court of the county in which the court from which the
31 appeal is taken is located, in the following cases:

32 (a) By the people:

33 (1) From an order recusing the district attorney or city attorney
34 pursuant to Section 1424.

35 (2) From an order or judgment dismissing or otherwise
36 terminating all or any portion of the action, including such an order
37 or judgment, entered after a verdict or finding of guilty or a verdict
38 or judgment entered before the defendant has been placed in
39 jeopardy or where the defendant has waived jeopardy.

1 (3) From sustaining a demurrer to any portion of the complaint
2 or pleading.

3 (4) From an order granting a new trial.

4 (5) From an order arresting judgment.

5 (6) From any order made after judgment affecting the substantial
6 rights of the people.

7 (7) From the imposition of an unlawful sentence, whether or
8 not the court suspends the execution of sentence. As used in this
9 subparagraph, “unlawful sentence” means the imposition of a
10 sentence not authorized by law or the imposition of a sentence
11 based upon an unlawful order of the court that strikes or otherwise
12 modifies the effect of an enhancement or prior conviction. A
13 defendant shall have the right to counsel in the people’s appeal of
14 an unlawful sentence under the same circumstances that he or she
15 would have a right to counsel under subdivision (a) of Section
16 1238.

17 (8) Nothing in this section shall be construed to authorize an
18 appeal from an order granting probation. Instead, the people may
19 seek appellate review of any grant of probation, whether or not
20 the court imposes sentence, by means of a petition for a writ of
21 mandate or prohibition that is filed within 60 days after probation
22 is granted. The review of any grant of probation shall include
23 review of any order underlying the grant of probation.

24 (b) By the defendant:

25 (1) From a final judgment of conviction. A sentence, an order
26 granting probation, a conviction in a case in which before final
27 judgment the defendant is committed for insanity or is given an
28 indeterminate commitment as a mentally disordered sex offender,
29 or the conviction of a defendant committed for controlled substance
30 addiction shall be deemed to be a final judgment within the
31 meaning of this section. Upon appeal from a final judgment or an
32 order granting probation the court may review any order denying
33 a motion for a new trial.

34 (2) From any order made after judgment affecting his or her
35 substantial rights.

36 *SEC. 15. Section 11105.2 of the Penal Code is amended to*
37 *read:*

38 11105.2. (a) The Department of Justice may provide
39 subsequent *state or federal* arrest notification to any ~~agency~~ *entity*
40 authorized by ~~Section 11105~~ *state or federal code or regulation*

1 to receive state *or federal* summary criminal history information
2 to assist in fulfilling employment, licensing, certification duties,
3 or the duties of approving relative caregivers and nonrelative
4 extended family members, upon the arrest of any person whose
5 fingerprints are maintained on file at the Department of Justice *or*
6 *the Federal Bureau of Investigation* as the result of an application
7 for licensing, employment, certification, or approval. The
8 notification shall consist of a current copy of the person's state *or*
9 *federal* summary criminal history transcript.

10 (b) For purposes of this section, "approval" means those duties
11 described in subdivision (d) of Section 309 of the Welfare and
12 Institutions Code for approving the home of a relative caregiver
13 or of a nonrelative extended family member for placement of a
14 child supervised by the juvenile court.

15 (c) Any ~~agency~~ *entity*, other than a law enforcement agency
16 employing peace officers as defined in Section 830.1, subdivisions
17 (a) and (e) of Section 830.2, subdivision (a) of Section 830.3,
18 subdivisions (a) and (b) of Section 830.5, and subdivision (a) of
19 Section 830.31, shall enter into a contract with the Department of
20 Justice in order to receive notification of subsequent *state or federal*
21 arrests for licensing, employment, or certification purposes.

22 (d) Any ~~agency~~ *entity* which submits the fingerprints of
23 applicants for licensing, employment, certification, or approval to
24 the Department of Justice for the purpose of establishing a record
25 of the applicant to receive notification of subsequent *state or*
26 *federal* arrests shall immediately notify the department when the
27 employment of the applicant is terminated, when the applicant's
28 license or certificate is revoked, when the applicant may no longer
29 renew or reinstate the license or certificate, or when a relative
30 caregiver's or nonrelative extended family member's approval is
31 terminated. The Department of Justice shall terminate subsequent
32 *state or federal* arrest notification on any applicant upon the request
33 of the licensing, employment, certifying, or approving authority.

34 (e) Any ~~agency~~ *entity* receiving a notification of a subsequent
35 *state or federal* arrest for a person unknown to the ~~agency~~ *entity*,
36 or for a person no longer employed by the ~~agency~~ *entity*, or no
37 longer eligible to renew the certificate or license for which
38 subsequent *state or federal* arrest notification service was
39 established shall immediately return the subsequent *state or federal*
40 arrest notification to the Department of Justice, informing the

1 department that the ~~agency~~ *entity* is no longer interested in the
2 applicant. The ~~agency~~ *entity* shall not record or otherwise retain
3 any information received as a result of the subsequent ~~arrest~~ notice.

4 (f) Any ~~agency~~ *entity* which submits the fingerprints of an
5 applicant for employment, licensing, certification, or approval to
6 the Department of Justice for the purpose of establishing a record
7 at the department *or the Federal Bureau of Investigation* to receive
8 notification of subsequent arrest shall immediately notify the
9 department if the applicant is not subsequently employed, or if the
10 applicant is denied licensing certification, or approval.

11 (g) An ~~agency~~ *entity that* fails to provide the Department
12 of Justice with notification as set forth in subdivisions (c), (d), and
13 (e) may be denied further subsequent ~~arrest~~ notification service.

14 (h) Notwithstanding subdivisions (c), (d), and (f), subsequent
15 *state or federal* arrest notification by the Department of Justice
16 and retention by the employing agency shall continue as to retired
17 peace officers listed in subdivision (c) of Section 830.5.

18 *SEC. 16. Section 14314 of the Penal Code is amended to read:*

19 14314. Notwithstanding any other provision of this title, the
20 agency shall not implement this title until there is an amount of
21 one hundred thousand dollars (\$100,000) in the account.

22 Funds in the account shall be divided as follows:

23 (a) Twenty-five percent or one hundred thousand dollars
24 (\$100,000) to the commission, whichever is less. *The commission*
25 *may decline all or part of the funds allocated to it pursuant to this*
26 *subdivision. Any funds so declined shall be made available for*
27 *use, upon appropriation by the Legislature, by any of the entities*
28 *listed in subdivisions (b), (c), and (d) for the training of peace*
29 *officers consistent with this title.*

30 (b) Twenty-five percent to the secretary for allocation to the
31 Environmental Circuit Prosecutor Project pursuant to Chapter 4
32 (commencing with Section 14309).

33 (c) Twenty-five percent to the secretary for allocation to the
34 California District Attorneys Association for training and assistance
35 pursuant to Chapter 3 (commencing with Section 14306).

36 (d) (1) The balance to the secretary for grants awarded to
37 programs pursuant to Chapter 3 (commencing with Section 14306)
38 or Chapter 4 (commencing with Section 14309) based on need or
39 in order to sustain the current level of presence and enforcement
40 for those programs.

1 (2) Notwithstanding paragraph (1), the commission may also
2 seek additional funding from the money allocated in this
3 subdivision based on need if the environmental law enforcement
4 training is mandated or if there are substantial changes in the law
5 that require the commission to revise its environmental law courses.

6 (e) The secretary shall develop an application process for
7 awarding funds to programs pursuant to subdivisions (b), (c), and
8 (d).

9 *SEC. 17. Section 10334 of the Public Contract Code, as*
10 *amended by Section 95 of Chapter 178 of the Statutes of 2010, is*
11 *amended to read:*

12 10334. (a) No state employee shall acquire any goods from
13 the state, unless the goods are offered to the general public in the
14 regular course of the state's business on the same terms and
15 conditions as those applicable to the employee. "State employee,"
16 as used in this section, means any employee of the state included
17 within Section 82009 of the Government Code, and all officers
18 and employees included within Section 4 of Article VII of the
19 California Constitution, except those persons excluded from the
20 definition of "designated employee" under the last paragraph of
21 Section 82019 of the Government Code.

22 (b) Notwithstanding subdivision (a), any peace officer as defined
23 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
24 2 of the Penal Code, employed by the State of California for a
25 period of more than 120 months who has been duly retired through
26 a service retirement or a peace officer retiring from a job-incurred
27 disability not related to a mental or emotional disorder and who
28 has been granted the legal right to carry a concealed firearm
29 pursuant to Article 2 (commencing with Section 25450) of Chapter
30 2 of Division 5 of Title 4 of Part 6 of the Penal Code may be
31 authorized by the person's department head to purchase his or her
32 state-issued handgun. Disability retired peace officers need not
33 meet the 120-month employment requirement. The cost of the
34 handgun shall be the fair market value as listed in the annual Blue
35 Book of Gun Values or replacement cost, whichever is less, of the
36 handgun issued as determined by the appointing power, plus a
37 charge for the cost of handling. The retiring officer shall request
38 to purchase his or her handgun in writing to the department within
39 30 calendar days of his or her retirement date.

1 (c) Notwithstanding subdivision (a), any peace officer described
2 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
3 2 of the Penal Code employed by the State of California who is
4 authorized to carry firearms may purchase his or her state-issued
5 service firearm if the person's department head directs the
6 department to change its state-issued service weapon system. The
7 cost of the service firearm shall be the fair market value as listed
8 in the annual Blue Book of Gun Values or replacement cost,
9 whichever is less, of the firearm issued as determined by the
10 department head, plus a charge for the cost of handling. The
11 requesting officer shall request to purchase his or her firearm in
12 writing to the department within 10 calendar days of receiving the
13 new state-issued weapon.

14 (d) *Notwithstanding subdivision (a), the spouse of a peace*
15 *officer, as defined in Chapter 4.5 (commencing with Section 830)*
16 *of Title 3 of Part 2 of the Penal Code, employed by the state who*
17 *has died in the line of duty may be authorized by the deceased's*
18 *department head to purchase his or her spouse's state-issued*
19 *handgun. The cost of the handgun shall be the fair market value*
20 *as listed in the annual Blue Book of Gun Values or replacement*
21 *costs, whichever is less, of the handgun issued as determined by*
22 *the appointing power, plus a charge for the cost of handling. The*
23 *spouse shall request to purchase the handgun in writing to the*
24 *department within 30 calendar days of his or her spouse's date of*
25 *death.*

26 *SEC. 18. Section 21203 of the Vehicle Code is amended to*
27 *read:*

28 21203. No person riding upon any motorcycle, motorized
29 bicycle, toy vehicle, or any type of human-powered or
30 gravity-powered device, including, but not limited to, a bicycle,
31 tricycle, four-wheeled cycle, surrey, coaster, roller skates, roller
32 skis, wheeled shoes, skateboard, scooter, sled, ~~or toy vehicle or~~
33 skis, shall attach the same or himself to any streetcar or vehicle on
34 the roadway.

35 *SEC. 19. Section 21712 of the Vehicle Code is amended to*
36 *read:*

37 21712. (a) A person driving a motor vehicle shall not
38 knowingly permit a person to ride on a vehicle or upon a portion
39 of a vehicle that is not designed or intended for the use of
40 passengers.

1 (b) A person shall not ride on a vehicle or upon a portion of a
2 vehicle that is not designed or intended for the use of passengers.

3 (c) A person driving a motor vehicle shall not knowingly permit
4 a person to ride in the trunk of that motor vehicle.

5 (d) A person shall not ride in the trunk of a motor vehicle.

6 (e) A person violating subdivision (c) or (d) shall be punished
7 as follows:

8 (1) By a fine of one hundred dollars (\$100).

9 (2) For a second violation occurring within one year of a prior
10 violation that resulted in a conviction, a fine of two hundred dollars
11 (\$200).

12 (3) For a third or a subsequent violation occurring within one
13 year of two or more prior violations that resulted in convictions,
14 a fine of two hundred fifty dollars (\$250).

15 (f) Subdivisions (a) and (b) do not apply to an employee engaged
16 in the necessary discharge of his or her duty or in the case of
17 persons riding completely within or upon vehicle bodies in the
18 space intended for a load on the vehicle.

19 (g) A person shall not drive a motor vehicle that is towing a
20 trailer coach, camp trailer, or trailer carrying a vessel, containing
21 a passenger, except when a trailer carrying or designed to carry a
22 vessel is engaged in the launching or recovery of the vessel.

23 (h) A person shall not knowingly drive a motor vehicle that is
24 towing a person riding upon a motorcycle, motorized bicycle, *toy*
25 *vehicle, or any type of human-powered or gravity-powered device,*
26 *including, but not limited to, a bicycle, tricycle, four-wheeled cycle,*
27 *surrey, coaster, roller skates, roller skis, wheeled shoes, skateboard,*
28 *scooter, sled, or skis, ~~or toy vehicle.~~*

29 (i) Subdivision (g) does not apply to a trailer coach that is towed
30 with a fifth-wheel device if the trailer coach is equipped with safety
31 glazing materials wherever glazing materials are used in windows
32 or doors, with an audible or visual signaling device that a passenger
33 inside the trailer coach can use to gain the attention of the motor
34 vehicle driver, and with at least one unobstructed exit capable of
35 being opened from both the interior and exterior of the trailer
36 coach.

37 SEC. 8. Any section of any act, other than _____, enacted by
38 the Legislature during the 2011 calendar year that takes effect on
39 or before January 1, 2012, and that amends, amends and renumbers,
40 adds, repeals and adds, or repeals any one or more of the sections

1 affected by this act shall prevail over this act, whether this act is
2 enacted prior to, or subsequent to, the enactment of that act. The
3 repeal, or repeal and addition, of any article, chapter, part, title, or
4 division of any code by this act shall not become operative if any
5 section of any other act, other than _____, that is enacted by the
6 Legislature during the 2011 calendar year and takes effect on or
7 before January 1, 2012, amends, amends and renumbers, adds,
8 repeals and adds, or repeals any section contained in that article,
9 chapter, part, title, or division.

10 SEC. 9. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.