

AMENDED IN ASSEMBLY AUGUST 18, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 428

Introduced by Senator Strickland

February 16, 2011

An act to amend Sections 7480, 15202.1, and 70372 of the Government Code, *and* to amend Sections 633.8, 904.7, 992, 1203.4, 1203.4a, 1466, 14303, and 14314 of the Penal Code, ~~and to amend Section 10334 of the Public Contract Code~~, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 428, as amended, Strickland. Lester's Law of 2011.

(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 *which* 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 ~~eases~~ *case* 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 ~~eases~~ *case* in which a final judgment was not entered prior to January 1, 1990.

(3) Existing law requires a state court construction penalty *to* 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.

(4) 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.

(5) 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 technical, nonsubstantive changes to that provision.

(6) 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.

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

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

(8) 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.

(9) 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.

(10) 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 reallocated, as specified, for other authorized purposes for the training of peace officers. The bill would make a related change.

~~(11) 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.~~

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

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

- 1 SECTION 1. This act shall be known and may be cited as
- 2 Lester's Law of 2011.
- 3 SEC. 2. Section 7480 of the Government Code, as amended
- 4 by Section 29 of Chapter 697 of the Statutes of 2010, is amended
- 5 to read:
- 6 7480. Nothing in this chapter shall prohibit any of the
- 7 following:

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

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

20 (1) The number of items dishonored.

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

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

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

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

30 (6) The date the account opened and, if applicable, the date the
31 account closed.

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

37 (A) Requires a financial institution to produce a photograph or
38 video recording if it does not possess the photograph or video
39 recording.

1 (B) Affects any existing civil immunities as provided in Section
2 47 of the Civil Code or any other provision of law.

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

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

23 (1) The number of items dishonored.

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

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

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

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

33 (6) The date the account opened and, if applicable, the date the
34 account closed.

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

1 (A) Requires a financial institution to produce a photograph or
2 video recording if it does not possess the photograph or video
3 recording.

4 (B) Affects any existing civil immunities as provided in Section
5 47 of the Civil Code or any other provision of law.

6 (8) A bank, credit union, or savings association doing business
7 in this state that provides the requesting party with copies of one
8 or more complete account statements prepared in the regular course
9 of business shall be deemed to be in compliance with paragraphs
10 (1), (2), (3), and (4).

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

15 (1) Authorization of the disclosure for the period specified in
16 subdivision (c).

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

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

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

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

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

10 (f) The examination by, or disclosure to, any supervisory agency
11 of financial records that relate solely to the exercise of its
12 supervisory function. The scope of an agency's supervisory
13 function shall be determined by reference to statutes that grant
14 authority to examine, audit, or require reports of financial records
15 or financial institutions as follows:

16 (1) With respect to the Commissioner of Financial Institutions
17 by reference to Division 1 (commencing with Section 99), Division
18 1.5 (commencing with Section 4800), Division 2 (commencing
19 with Section 5000), Division 5 (commencing with Section 14000),
20 Division 7 (commencing with Section 18000), Division 15
21 (commencing with Section 31000), and Division 16 (commencing
22 with Section 33000), of the Financial Code.

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

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

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

38 (h) The disclosure to the State Board of Equalization of any of
39 the following:

- 1 (1) The information required by Sections 6702, 6703, 8954,
2 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
3 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
4 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
5 Revenue and Taxation Code.
- 6 (2) The financial records in connection with the filing or audit
7 of a tax return required to be filed by the financial institution
8 pursuant to Part 1 (commencing with Section 6001), Part 2
9 (commencing with Section 7301), Part 3 (commencing with Section
10 8601), Part 13 (commencing with Section 30001), Part 14
11 (commencing with Section 32001), and Part 17 (commencing with
12 Section 37001), of Division 2 of the Revenue and Taxation Code.
- 13 (3) The amount of any security interest a financial institution
14 has in a specified asset of a customer, if the inquiry is directed to
15 the branch or office where the interest is held.
- 16 (i) The disclosure to the Controller of the information required
17 by Section 7853 of the Revenue and Taxation Code.
- 18 (j) The disclosure to the Employment Development Department
19 of the amount of any security interest a financial institution has in
20 a specified asset of a customer, if the inquiry is directed to the
21 branch or office where the interest is held.
- 22 (k) The disclosure by a construction lender, as defined in Section
23 8006 of the Civil Code, to the Registrar of Contractors, of
24 information concerning the making of progress payments to a
25 prime contractor requested by the registrar in connection with an
26 investigation under Section 7108.5 of the Business and Professions
27 Code.
- 28 (l) Upon receipt of a written request from a local child support
29 agency referring to a support order pursuant to Section 17400 of
30 the Family Code, a financial institution shall disclose the following
31 information concerning the account or the person named in the
32 request, whom the local child support agency shall identify,
33 whenever possible, by social security number:
- 34 (1) If the request states the identifying number of an account at
35 a financial institution, the name of each owner of the account.
- 36 (2) Each account maintained by the person at the branch to
37 which the request is delivered, and, if the branch is able to make
38 a computerized search, each account maintained by the person at
39 any other branch of the financial institution located in this state.

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

6 (4) Whenever the request prohibits the disclosure, a financial
7 institution shall not disclose either the request or its response, to
8 an owner of the account or to any other person, except the officers
9 and employees of the financial institution who are involved in
10 responding to the request and to attorneys, employees of the local
11 child support agencies, auditors, and regulatory authorities who
12 have a need to know in order to perform their duties, and except
13 as disclosure may be required by legal process.

14 (5) No financial institution, or any officer, employee, or agent
15 thereof, shall be liable to any person for (A) disclosing information
16 in response to a request pursuant to this subdivision, (B) failing to
17 notify the owner of an account, or complying with a request under
18 this paragraph not to disclose to the owner, the request or disclosure
19 under this subdivision, or (C) failing to discover any account owned
20 by the person named in the request pursuant to a computerized
21 search of the records of the financial institution.

22 (6) The local child support agency may request information
23 pursuant to this subdivision only when the local child support
24 agency has received at least one of the following types of physical
25 evidence:

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

27 (i) Form 599.

28 (ii) Form 1099.

29 (iii) A bank statement.

30 (iv) A check.

31 (v) A bank passbook.

32 (vi) A deposit slip.

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

34 (viii) A debit or credit advice.

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

37 (x) Correspondence that identifies the child support obligor by
38 name, the bank, and the banking services related to the account of
39 the obligor.

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

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

5 (7) Information obtained by a local child support agency
6 pursuant to this subdivision shall be used only for purposes that
7 are directly connected with the administration of the duties of the
8 local child support agency pursuant to Section 17400 of the Family
9 Code.

10 (m) (1) As provided in paragraph (1) of subdivision (c) of
11 Section 666 of Title 42 of the United States Code, upon receipt of
12 an administrative subpoena on the current federally approved
13 interstate child support enforcement form, as approved by the
14 federal Office of Management and Budget, a financial institution
15 shall provide the information or documents requested by the
16 administrative subpoena.

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

26 (3) If the person who signs the administrative subpoena directs
27 a financial institution in writing not to disclose either the subpoena
28 or its response to any owner of an account covered by the subpoena,
29 the financial institution shall not disclose the subpoena or its
30 response to the owner.

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

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

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

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

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

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

16 (B) The ex parte application and any subsequent judicial order
17 shall be open to the public as a judicial record unless ordered sealed
18 by the court, for a period of 60 days. The sealing of these records
19 may be extended for 60-day periods upon a showing to the court
20 that it is necessary for the continuance of the investigation.
21 Sixty-day extensions may continue for up to one year or until
22 termination of the investigation of the individual or individuals,
23 whichever is sooner.

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

27 (D) Nothing in this subdivision shall preclude the financial
28 institution from notifying a customer of the receipt of the order
29 for production of records unless a court orders the financial
30 institution to withhold notification to the customer upon a finding
31 that the notice would impede the investigation.

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

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

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

3 (A) Disclosing information to a probate court pursuant to
4 Sections 2892 and 2893.

5 (B) Disclosing information in response to a court order pursuant
6 to paragraph (3).

7 (C) Complying with a court order under this subdivision not to
8 disclose to the customer, the order, or the dissemination of
9 information pursuant to the court order.

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

13 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
14 Civil Code, provided that the financial institution has first complied
15 with the requirements of paragraph (2) of subdivision (a) and
16 subdivision (b) of Section 1748.95 of the Civil Code.

17 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
18 Financial Code, provided that the financial institution has first
19 complied with the requirements of paragraph (2) of subdivision
20 (a) and subdivision (b) of Section 4002 of the Financial Code.

21 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
22 Financial Code, provided that any financial institution that is a
23 finance lender has first complied with the requirements of
24 paragraph (2) of subdivision (a) and subdivision (b) of Section
25 22470 of the Financial Code.

26 (p) When the governing board of the Public Employees'
27 Retirement System or the State Teachers' Retirement System
28 certifies in writing to a financial institution that a benefit recipient
29 has died and that transfers to the benefit recipient's account at the
30 financial institution from the retirement system occurred after the
31 benefit recipient's date of death, the financial institution shall
32 furnish the retirement system with the name and address of any
33 coowner, cosigner, or any other person who had access to the funds
34 in the account following the date of the benefit recipient's death,
35 or if the account has been closed, the name and address of the
36 person who closed the account.

37 (q) When the retirement board of a retirement system established
38 under the County Employees Retirement Law of 1937 certifies in
39 writing to a financial institution that a retired member or the
40 beneficiary of a retired member has died and that transfers to the

1 account of the retired member or beneficiary of a retired member
2 at the financial institution from the retirement system occurred
3 after the date of death of the retired member or beneficiary of a
4 retired member, the financial institution shall furnish the retirement
5 system with the name and address of any coowner, cosigner, or
6 any other person who had access to the funds in the account
7 following the date of death of the retired member or beneficiary
8 of a retired member, or if the account has been closed, the name
9 and address of the person who closed the account.

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

24 SEC. 3. Section 7480 of the Government Code, as amended
25 by Section 30 of Chapter 697 of the Statutes of 2010, is amended
26 to read:

27 7480. Nothing in this chapter shall prohibit any of the
28 following:

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

32 (b) When any police or sheriff's department or district attorney
33 in this state certifies to a bank, credit union, or savings association
34 in writing that a crime report has been filed that involves the
35 alleged fraudulent use of drafts, checks, access cards, or other
36 orders drawn upon any bank, credit union, or savings association
37 in this state, the police or sheriff's department or district attorney,
38 a county adult protective services office when investigating the
39 financial abuse of an elder or dependent adult, or a long-term care
40 ombudsman when investigating the financial abuse of an elder or

1 dependent adult, may request a bank, credit union, or savings
2 association to furnish, and a bank, credit union, or savings
3 association shall furnish, a statement setting forth the following
4 information with respect to a customer account specified by the
5 requesting party for a period 30 days prior to, and up to 30 days
6 following, the date of occurrence of the alleged illegal act involving
7 the account:

8 (1) The number of items dishonored.

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

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

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

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

18 (6) The date the account opened and, if applicable, the date the
19 account closed.

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

25 (A) Requires a financial institution to produce a photograph or
26 video recording if it does not possess the photograph or video
27 recording.

28 (B) Affects any existing civil immunities as provided in Section
29 47 of the Civil Code or any other provision of law.

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

34 (c) When any police or sheriff's department or district attorney
35 in this state certifies to a bank, credit union, or savings association
36 in writing that a crime report has been filed that involves the
37 alleged fraudulent use of drafts, checks, access cards, or other
38 orders drawn upon any bank, credit union, or savings association
39 doing business in this state, the police or sheriff's department or
40 district attorney, a county adult protective services office when

1 investigating the financial abuse of an elder or dependent adult,
2 or a long-term care ombudsman when investigating the financial
3 abuse of an elder or dependent adult, may request, with the consent
4 of the accountholder, the bank, credit union, or savings association
5 to furnish, and the bank, credit union, or savings association shall
6 furnish, a statement setting forth the following information with
7 respect to a customer account specified by the requesting party for
8 a period 30 days prior to, and up to 30 days following, the date of
9 occurrence of the alleged illegal act involving the account:

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

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

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

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

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

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

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

36 (f) The examination by, or disclosure to, any supervisory agency
37 of financial records that relate solely to the exercise of its
38 supervisory function. The scope of an agency's supervisory
39 function shall be determined by reference to statutes that grant

1 authority to examine, audit, or require reports of financial records
2 or financial institutions as follows:

3 (1) With respect to the Commissioner of Financial Institutions
4 by reference to Division 1 (commencing with Section 99), Division
5 1.5 (commencing with Section 4800), Division 2 (commencing
6 with Section 5000), Division 5 (commencing with Section 14000),
7 Division 7 (commencing with Section 18000), Division 15
8 (commencing with Section 31000), and Division 16 (commencing
9 with Section 33000), of the Financial Code.

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

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

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

25 (h) The disclosure to the State Board of Equalization of any of
26 the following:

27 (1) The information required by Sections 6702, 6703, 8954,
28 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
29 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
30 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
31 Revenue and Taxation Code.

32 (2) The financial records in connection with the filing or audit
33 of a tax return required to be filed by the financial institution
34 pursuant to Part 1 (commencing with Section 6001), Part 2
35 (commencing with Section 7301), Part 3 (commencing with Section
36 8601), Part 13 (commencing with Section 30001), Part 14
37 (commencing with Section 32001), and Part 17 (commencing with
38 Section 37001), of Division 2 of the Revenue and Taxation Code.

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

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

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

10 (k) The disclosure by a construction lender, as defined in Section
11 8006 of the Civil Code, to the Registrar of Contractors, of
12 information concerning the making of progress payments to a
13 prime contractor requested by the registrar in connection with an
14 investigation under Section 7108.5 of the Business and Professions
15 Code.

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

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

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

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

33 (4) Whenever the request prohibits the disclosure, a financial
34 institution shall not disclose either the request or its response, to
35 an owner of the account or to any other person, except the officers
36 and employees of the financial institution who are involved in
37 responding to the request and to attorneys, employees of the local
38 child support agencies, auditors, and regulatory authorities who
39 have a need to know in order to perform their duties, and except
40 as disclosure may be required by legal process.

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

9 (6) The local child support agency may request information
10 pursuant to this subdivision only when the local child support
11 agency has received at least one of the following types of physical
12 evidence:

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

14 (i) Form 599.

15 (ii) Form 1099.

16 (iii) A bank statement.

17 (iv) A check.

18 (v) A bank passbook.

19 (vi) A deposit slip.

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

21 (viii) A debit or credit advice.

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

24 (x) Correspondence that identifies the child support obligor by
25 name, the bank, and the banking services related to the account of
26 the obligor.

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

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

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

37 (m) (1) As provided in paragraph (1) of subdivision (c) of
38 Section 666 of Title 42 of the United States Code, upon receipt of
39 an administrative subpoena on the current federally approved
40 interstate child support enforcement form, as approved by the

1 federal Office of Management and Budget, a financial institution
2 shall provide the information or documents requested by the
3 administrative subpoena.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (A) Disclosing information to a probate court pursuant to
31 Sections 2892 and 2893.

32 (B) Disclosing information in response to a court order pursuant
33 to paragraph (3).

34 (C) Complying with a court order under this subdivision not to
35 disclose to the customer, the order, or the dissemination of
36 information pursuant to the court order.

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

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

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

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

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

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

38 (r) When the Franchise Tax Board certifies in writing to a
39 financial institution that (1) a taxpayer filed a tax return that
40 authorized a direct deposit refund with an incorrect financial

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

12 SEC. 4. Section 15202.1 of the Government Code is amended
13 to read:

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

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

30 (2) The limitation provided in this subdivision shall not apply
31 to Sierra County. Instead, the County of Sierra may apply to the
32 Controller for reimbursement pursuant to subdivision (a) for its
33 costs incident to the prosecution of the homicide trial of People v.
34 Corjasso.

35 SEC. 5. Section 70372 of the Government Code is amended
36 to read:

37 70372. (a) (1) Except as otherwise provided in this article,
38 there shall be levied a state court construction penalty, in the
39 amount of five dollars (\$5) for every ten dollars (\$10), or part of
40 ten dollars (\$10), upon every fine, penalty, or forfeiture imposed

1 and collected by the courts for all criminal offenses, including, but
2 not limited to, all offenses involving a violation of a section of the
3 Fish and Game Code, the Health and Safety Code, or the Vehicle
4 Code or any local ordinance adopted pursuant to the Vehicle Code.
5 This penalty is in addition to any other state or local penalty,
6 including, but not limited to, the penalty provided by Section 1464
7 of the Penal Code and Section 76000.

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

9 (A) Any restitution fine.

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

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

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

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

28 (b) In addition to the penalty provided by subdivision (a), for
29 every parking offense where a parking penalty, fine, or forfeiture
30 is imposed, an added state court construction penalty of four dollars
31 and fifty cents (\$4.50) shall be included in the total penalty, fine,
32 or forfeiture. These moneys shall be taken from fines and
33 forfeitures deposited with the county treasurer prior to any division
34 pursuant to Section 1462.3 or 1463.009 of the Penal Code. In those
35 cities, districts, or other issuing agencies which elect to accept
36 parking penalties, and otherwise process parking violations
37 pursuant to Article 3 (commencing with Section 40200) of Chapter
38 1 of Division 17 of the Vehicle Code, that city, district, or issuing
39 agency shall observe the increased bail amounts as established by
40 the court reflecting the added penalty provided for by this

1 subdivision. Each agency that elects to process parking violations
2 shall pay to the county treasurer four dollars and fifty cents (\$4.50)
3 for the parking penalty imposed by this subdivision for each
4 violation that is not filed in court. Those payments to the county
5 treasurer shall be made monthly, and the county treasurer shall
6 transmit these sums as provided in paragraph (2) of subdivision
7 (f). In the event these payments were deposited in a local
8 courthouse construction fund and expended pursuant to the
9 provisions of Chapter 592 of the Statutes of 2003, no county or
10 processing agency shall be liable for the failure to transmit the
11 payments to the Controller during the 2008 calendar year.

12 (c) If multiple offenses are involved, the state court construction
13 penalty under subdivision (a) shall be based upon the total fine or
14 bail for each case. If a fine is suspended, in whole or in part, the
15 state court construction penalty under subdivision (a) shall be
16 reduced in proportion to the suspension.

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

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

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

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

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

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

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

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

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

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

16 633.8. (a) It is the intent of the Legislature in enacting this
17 section to provide law enforcement with the ability to use electronic
18 amplifying or recording devices to eavesdrop on and record the
19 otherwise confidential oral communications of individuals within
20 a location when responding to an emergency situation that involves
21 the taking of a hostage or the barricading of a location. It is the
22 intent of the Legislature that eavesdropping on oral
23 communications pursuant to this section comply with paragraph
24 (7) of Section 2518 of Title 18 of the United States Code.

25 (b) Notwithstanding the provisions of this chapter, and in
26 accordance with federal law, a designated peace officer described
27 in subdivision (c) may use, or authorize the use of, an electronic
28 amplifying or recording device to eavesdrop on or record, or both,
29 any oral communication within a particular location in response
30 to an emergency situation involving the taking of a hostage or
31 hostages or the barricading of a location if all of the following
32 conditions are satisfied:

33 (1) The officer reasonably determines that an emergency
34 situation exists involving the immediate danger of death or serious
35 physical injury to any person, within the meaning of Section
36 2518(7)(a)(i) of Title 18 of the United States Code.

37 (2) The officer reasonably determines that the emergency
38 situation requires that the eavesdropping on oral communication
39 occur immediately.

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

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

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

14 (e) If the determination is made by a designated peace officer
15 described in subdivision (c) that an emergency situation exists and
16 an eavesdropping device has been deployed, an application for an
17 order approving the eavesdropping shall be made within 48 hours
18 of the beginning of the eavesdropping and shall comply with the
19 requirements of Section 629.50. A court may grant an application
20 authorizing the use of electronic amplifying or recording devices
21 to eavesdrop on and record otherwise confidential oral
22 communications in barricade or hostage situations where there is
23 probable cause to believe that an individual is committing, has
24 committed, or is about to commit an offense listed in Section
25 2516(2) of Title 18 of the United States Code.

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

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

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

37 (i) A judge shall not grant an application made pursuant to this
38 section in anticipation that an emergency situation will arise. A
39 judge shall grant an application authorizing the use of electronic
40 amplifying or recording devices to eavesdrop on and record

1 otherwise confidential oral communications in barricade or hostage
2 situations where there is probable cause to believe that an
3 individual is committing, has committed, or is about to commit an
4 offense listed in Section 2516(2) of Title 18 of the United States
5 Code, and only if the peace officer has fully complied with the
6 requirements of this section. If an application is granted pursuant
7 to this section, an inventory shall be served pursuant to Section
8 629.68.

9 (j) This section does not require that a peace officer designated
10 pursuant to subdivision (c) undergo training pursuant to Section
11 629.94.

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

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

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

20 904.7. (a) Notwithstanding subdivision (a) of Section 904.6
21 or any other provision, in the County of San Bernardino, the
22 presiding judge of the superior court, or the judge appointed by
23 the presiding judge to supervise the grand jury, may, upon the
24 request of the Attorney General or the district attorney or upon his
25 or her own motion, order and direct the impanelment of an
26 additional civil grand jury pursuant to this section.

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

33 (c) Any additional civil grand jury that is impaneled pursuant
34 to this section may serve for a term as determined by the presiding
35 judge or the judge appointed by the presiding judge to supervise
36 the civil grand jury, but may be discharged at any time within the
37 set term by order of the presiding judge or the judge appointed by
38 the presiding judge to supervise the civil grand jury. In no event
39 shall more than one additional civil grand jury be impaneled
40 pursuant to this section at the same time.

1 (d) Whenever an additional civil grand jury is impaneled
2 pursuant to this section, it may inquire into matters of oversight,
3 conduct investigations, issue reports, and make recommendations,
4 except for any matters that the regular grand jury is inquiring into
5 at the time of its impanelment. Any additional civil grand jury
6 impaneled pursuant to this section shall not have jurisdiction to
7 issue indictments.

8 (e) It is the intent of the Legislature that, in the County of San
9 Bernardino, all persons qualified for jury service shall have an
10 equal opportunity to be considered for service as grand jurors
11 within the county, and that they have an obligation to serve, when
12 summoned for that purpose. All persons selected for an additional
13 grand jury shall be selected at random from a source or sources
14 reasonably representative of a cross section of the population that
15 is eligible for jury service in the county.

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

17 992. (a) (1) In any case in which the defendant is charged
18 with a felony, the court shall require the defendant to provide a
19 right thumbprint on a form developed for this purpose. Unless the
20 court has obtained the thumbprint at an earlier proceeding, it shall
21 do so at the arraignment on the information or indictment, or upon
22 entry of a guilty or no contest plea under Section 859a. The
23 fingerprint form shall include the name and superior court case
24 number of the defendant, the date, and the printed name, position,
25 and badge or serial number of the court bailiff who imprints the
26 defendant's thumbprint. In the event the defendant is physically
27 unable to provide a right thumbprint, the defendant shall provide
28 a left thumbprint. In the event the defendant is physically unable
29 to provide a left thumbprint, the court shall make a determination
30 as to how the defendant might otherwise provide a suitable
31 identifying characteristic to be imprinted on the judgment of
32 conviction. The clerk shall note on the fingerprint form which
33 digit, if any, of the defendant's was imprinted thereon. In the event
34 that the defendant is convicted, this fingerprint form shall be
35 attached to the minute order reflecting the defendant's sentence.
36 The fingerprint form shall be permanently maintained in the
37 superior court file.

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

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

6 SEC. 9. Section 1203.4 of the Penal Code, as amended by
7 Section 76 of Chapter 178 of the Statutes of 2010, is amended to
8 read:

9 1203.4. (a) In any case in which a defendant has fulfilled the
10 conditions of probation for the entire period of probation, or has
11 been discharged prior to the termination of the period of probation,
12 or in any other case in which a court, in its discretion and the
13 interests of justice, determines that a defendant should be granted
14 the relief available under this section, the defendant shall, at any
15 time after the termination of the period of probation, if he or she
16 is not then serving a sentence for any offense, on probation for
17 any offense, or charged with the commission of any offense, be
18 permitted by the court to withdraw his or her plea of guilty or plea
19 of nolo contendere and enter a plea of not guilty; or, if he or she
20 has been convicted after a plea of not guilty, the court shall set
21 aside the verdict of guilty; and, in either case, the court shall
22 thereupon dismiss the accusations or information against the
23 defendant and except as noted below, he or she shall thereafter be
24 released from all penalties and disabilities resulting from the
25 offense of which he or she has been convicted, except as provided
26 in Section 13555 of the Vehicle Code. The probationer shall be
27 informed, in his or her probation papers, of this right and privilege
28 and his or her right, if any, to petition for a certificate of
29 rehabilitation and pardon. The probationer may make the
30 application and change of plea in person or by attorney, or by the
31 probation officer authorized in writing. However, in any subsequent
32 prosecution of the defendant for any other offense, the prior
33 conviction may be pleaded and proved and shall have the same
34 effect as if probation had not been granted or the accusation or
35 information dismissed. The order shall state, and the probationer
36 shall be informed, that the order does not relieve him or her of the
37 obligation to disclose the conviction in response to any direct
38 question contained in any questionnaire or application for public
39 office, for licensure by any state or local agency, or for contracting
40 with the California State Lottery.

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

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

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

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

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

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

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

1 standards set forth in paragraph (2) of subdivision (g) of Section
2 987.8 and shall not be a prerequisite to a person’s eligibility under
3 this section. The court may order reimbursement in any case in
4 which the petitioner appears to have the ability to pay, without
5 undue hardship, all or any portion of the costs for services
6 established pursuant to this subdivision.

7 (e) Relief shall not be granted under this section unless the
8 prosecuting attorney has been given 15 days’ notice of the petition
9 for relief. The probation officer shall notify the prosecuting attorney
10 when a petition is filed, pursuant to this section.

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

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

17 (g) Notwithstanding the above provisions or any other provision
18 of law, the Governor shall have the right to pardon a person
19 convicted of a violation of subdivision (c) of Section 286, Section
20 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
21 (j) of Section 289, if there are extraordinary circumstances.

22 SEC. 10. Section 1203.4a of the Penal Code is amended to
23 read:

24 1203.4a. (a) Every defendant convicted of a misdemeanor and
25 not granted probation, and every defendant convicted of an
26 infraction, shall, at any time after the lapse of one year from the
27 date of pronouncement of judgment, if he or she has fully complied
28 with and performed the sentence of the court, is not then serving
29 a sentence for any offense and is not under charge of commission
30 of any crime and has, since the pronouncement of judgment, lived
31 an honest and upright life and has conformed to and obeyed the
32 laws of the land, be permitted by the court to withdraw his or her
33 plea of guilty or nolo contendere and enter a plea of not guilty; or
34 if he or she has been convicted after a plea of not guilty, the court
35 shall set aside the verdict of guilty; and in either case the court
36 shall thereupon dismiss the accusatory pleading against the
37 defendant, who shall thereafter be released from all penalties and
38 disabilities resulting from the offense of which he or she has been
39 convicted, except as provided in Section 12021.1 of this code or
40 Section 13555 of the Vehicle Code. The defendant shall be

1 informed of the provisions of this section, either orally or in
2 writing, at the time he or she is sentenced. The defendant may
3 make an application and change of plea in person or by attorney,
4 or by the probation officer authorized in writing; provided, that in
5 any subsequent prosecution of the defendant for any other offense,
6 the prior conviction may be pleaded and proved and shall have the
7 same effect as if relief had not been granted pursuant to this section.

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

10 (b) Subdivision (a) does not apply to any misdemeanor falling
11 within the provisions of Section 42002.1 of the Vehicle Code, to
12 any infraction falling within the provisions of the Vehicle Code,
13 or to any local ordinance adopted pursuant to the Vehicle Code.

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

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

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

39 SEC. 11. Section 1466 of the Penal Code is amended to read:

1 1466. An appeal may be taken from a judgment or order, in an
2 infraction or misdemeanor case, to the appellate division of the
3 superior court of the county in which the court from which the
4 appeal is taken is located, in the following cases:

5 (a) By the people:

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

8 (2) From an order or judgment dismissing or otherwise
9 terminating all or any portion of the action, including such an order
10 or judgment, entered after a verdict or finding of guilty or a verdict
11 or judgment entered before the defendant has been placed in
12 jeopardy or where the defendant has waived jeopardy.

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

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

16 (5) From an order arresting judgment.

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

19 (7) From the imposition of an unlawful sentence, whether or
20 not the court suspends the execution of sentence. As used in this
21 paragraph, “unlawful sentence” means the imposition of a sentence
22 not authorized by law or the imposition of a sentence based upon
23 an unlawful order of the court that strikes or otherwise modifies
24 the effect of an enhancement or prior conviction. A defendant shall
25 have the right to counsel in the people’s appeal of an unlawful
26 sentence under the same circumstances that he or she would have
27 a right to counsel under subdivision (a) of Section 1238.

28 (8) Nothing in this section shall be construed to authorize an
29 appeal from an order granting probation. Instead, the people may
30 seek appellate review of any grant of probation, whether or not
31 the court imposes sentence, by means of a petition for a writ of
32 mandate or prohibition that is filed within 60 days after probation
33 is granted. The review of any grant of probation shall include
34 review of any order underlying the grant of probation.

35 (b) By the defendant:

36 (1) From a final judgment of conviction. A sentence, an order
37 granting probation, a conviction in a case in which before final
38 judgment the defendant is committed for insanity or is given an
39 indeterminate commitment as a mentally disordered sex offender,
40 or the conviction of a defendant committed for controlled substance

1 addiction shall be deemed to be a final judgment within the
2 meaning of this section. Upon appeal from a final judgment or an
3 order granting probation the court may review any order denying
4 a motion for a new trial.

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

7 SEC. 12. Section 14303 of the Penal Code is amended to read:

8 14303. (a) There is hereby created, in the General Fund, the
9 Environmental Enforcement and Training Account and up to two
10 million dollars (\$2,000,000) in the account may be expended
11 annually by the agency, upon appropriation by the Legislature, for
12 the purposes of this title.

13 (b) The agency may accept and receive any contribution of
14 funds from a public or private organization or an individual,
15 including the proceeds from a judgment in state or federal court,
16 when the funds are contributed or the judgment specifies that the
17 proceeds are to be used to carry out the purposes of this title.
18 Private contributors shall not have the authority to further influence
19 or direct the use of their contributions.

20 (c) The agency shall immediately deposit any funds contributed
21 pursuant to subdivision (b) in the account.

22 (d) As of January 1, 2003, all unallocated funds in the Hazardous
23 Materials Enforcement and Training Account created pursuant to
24 Chapter 743 of the Statutes of 1992 that derive from court
25 judgments specifying that the funds may be used only for purposes
26 of this title shall be transferred to the Environmental Enforcement
27 and Training Account.

28 (e) (1) Any funds that are appropriated by the Legislature
29 pursuant to subdivision (a), allocated pursuant to Section 14314,
30 and declined by the commission, shall be reallocated by the
31 secretary as described in Section 14314.

32 (2) This subdivision applies to funds that are appropriated for
33 the 2011–12 fiscal year and each fiscal year thereafter.

34 SEC. 13. Section 14314 of the Penal Code is amended to read:

35 14314. Notwithstanding any other provision of this title, the
36 agency shall not implement this title until there is an amount of
37 one hundred thousand dollars (\$100,000) in the account.

38 Funds in the account shall be divided as follows:

39 (a) Twenty-five percent or one hundred thousand dollars
40 (\$100,000) to the commission, whichever is less. The commission

1 may decline all or part of the funds allocated to it pursuant to this
2 subdivision. Any funds so declined shall be reallocated by the
3 secretary to any of the entities listed in subdivisions (b), (c), and
4 (d) for the training of peace officers consistent with this title.

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

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

11 (d) (1) The balance to the secretary for grants awarded to
12 programs pursuant to Chapter 3 (commencing with Section 14306)
13 or Chapter 4 (commencing with Section 14309) based on need or
14 in order to sustain the current level of presence and enforcement
15 for those programs.

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

21 (e) The secretary shall develop an application process for
22 awarding funds to programs pursuant to subdivisions (b), (c), and
23 (d).

24 ~~SEC. 14. Section 10334 of the Public Contract Code, as~~
25 ~~amended by Section 95 of Chapter 178 of the Statutes of 2010, is~~
26 ~~amended to read:~~

27 ~~10334. (a) No state employee shall acquire any goods from~~
28 ~~the state, unless the goods are offered to the general public in the~~
29 ~~regular course of the state's business on the same terms and~~
30 ~~conditions as those applicable to the employee. "State employee,"~~
31 ~~as used in this section, means any employee of the state included~~
32 ~~within Section 82009 of the Government Code, and all officers~~
33 ~~and employees included within Section 4 of Article VII of the~~
34 ~~California Constitution, except those persons excluded from the~~
35 ~~definition of "designated employee" under the last paragraph of~~
36 ~~Section 82019 of the Government Code.~~

37 ~~(b) Notwithstanding subdivision (a), any peace officer, as~~
38 ~~defined in Chapter 4.5 (commencing with Section 830) of Title 3~~
39 ~~of Part 2 of the Penal Code, employed by the State of California~~
40 ~~for a period of more than 120 months who has been duly retired~~

1 through a service retirement or a peace officer retiring from a
2 job incurred disability not related to a mental or emotional disorder
3 and who has been granted the legal right to carry a concealed
4 firearm pursuant to Article 2 (commencing with Section 25450)
5 of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code
6 may be authorized by the person's department head to purchase
7 his or her state-issued handgun. Disability retired peace officers
8 need not meet the 120-month employment requirement. The cost
9 of the handgun shall be the fair market value as listed in the annual
10 Blue Book of Gun Values or replacement cost, whichever is less,
11 of the handgun issued as determined by the appointing power, plus
12 a charge for the cost of handling. The retiring officer shall request
13 to purchase his or her handgun in writing to the department within
14 30 calendar days of his or her retirement date.

15 (e) Notwithstanding subdivision (a), any peace officer described
16 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
17 2 of the Penal Code employed by the State of California who is
18 authorized to carry firearms may purchase his or her state-issued
19 service firearm if the person's department head directs the
20 department to change its state-issued service weapon system. The
21 cost of the service firearm shall be the fair market value as listed
22 in the annual Blue Book of Gun Values or replacement cost,
23 whichever is less, of the firearm issued as determined by the
24 department head, plus a charge for the cost of handling. The
25 requesting officer shall request to purchase his or her firearm in
26 writing to the department within 10 calendar days of receiving the
27 new state-issued weapon.

28 (d) Notwithstanding subdivision (a), the spouse of a peace
29 officer, as defined in Chapter 4.5 (commencing with Section 830)
30 of Title 3 of Part 2 of the Penal Code, employed by the state who
31 has died in the line of duty may be authorized by the deceased's
32 department head to purchase his or her spouse's state-issued
33 handgun. The cost of the handgun shall be the fair market value
34 as listed in the annual Blue Book of Gun Values or replacement
35 costs, whichever is less, of the handgun issued as determined by
36 the appointing power, plus a charge for the cost of handling. The
37 spouse shall request to purchase the handgun in writing to the
38 department within 30 calendar days of his or her spouse's date of
39 death.

1 ~~SEC. 15.~~
2 *SEC. 14.* Any section of any act, other than AB 1023, enacted
3 by the Legislature during the 2011 calendar year that takes effect
4 on or before January 1, 2012, and that amends, amends and
5 rennumbers, adds, repeals and adds, or repeals any one or more of
6 the sections affected by this act shall prevail over this act, whether
7 this act is enacted prior to, or subsequent to, the enactment of that
8 act. The repeal, or repeal and addition, of any article, chapter, part,
9 title, or division of any code by this act shall not become operative
10 if any section of any other act, other than AB 1023, that is enacted
11 by the Legislature during the 2011 calendar year and takes effect
12 on or before January 1, 2012, amends, amends and rennumbers,
13 adds, repeals and adds, or repeals any section contained in that
14 article, chapter, part, title, or division.