

AMENDED IN SENATE MARCH 28, 1996

AMENDED IN SENATE MARCH 14, 1996

SENATE BILL

No. 1444

Introduced by Senator Solis

February 1, 1996

An act to amend Section 2236.1 of the Business and Professions Code, to amend Sections 44237, 67380, and 87010 of the Education Code, to amend Sections 352.1, 782, and 1103 of the Evidence Code, to amend Sections 355, 3021, and 7611.5 of the Family Code, to amend Sections 6254, 12970, 13960, and 19702 of the Government Code, to amend Section 273.5 of, and to add Section 679.04 to, the Penal Code, and to amend Sections 1732, 1767.1, 1781, 6500, 8103, and 15610.63 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1444, as amended, Solis. Crimes: domestic violence: sexual assault.

(1) Existing law provides that a physician and surgeon's certificate shall be suspended automatically during the time that the holder of the certificate is incarcerated after conviction of a felony and provides a hearing procedure to determine whether the felony was substantially related to the qualifications, functions, or duties of the physician and surgeon for purposes of determining the length of the suspension. Specified crimes are conclusively presumed to be substantially related to the qualifications, functions, or duties

of a physician and surgeon for these purposes and a hearing is not required with respect to a conviction for these crimes.

This bill would add the crime of spousal rape to the list of crimes that are conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon for these purposes.

(2) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to require each new employee having contact with minor pupils and not possessing a valid California teaching credential, or not currently licensed by another state agency that requires a criminal record check, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the department and the Federal Bureau of Investigation. The Department of Justice is required to review the Federal Bureau of Investigation criminal record summary to ascertain whether or not a new employee has a conviction record or an arrest pending final adjudication for any sex offense, controlled substance offense, or crime of violence, and to notify the private school employer, as specified, as to whether or not a new employee has a conviction or arrest pending final adjudication for any of those crimes.

This bill would add the crime of spousal rape to the list of sex offenses required to be reported for these purposes.

(3) Existing law provides that the names of victims of specified crimes may not be disclosed, except as provided, pursuant to provisions requiring the disclosure of information concerning crimes committed on specified postsecondary institution campuses.

This bill additionally would provide that the name of the victim of the crime of spousal rape may not be disclosed, except as specified, under these provisions.

(4) Existing law provides that governing boards of community college districts may not employ or retain on employment persons convicted of, and may suspend persons charge with, specified sex offenses.

This bill would add specified spousal rape offenses to the list of sex offenses for purposes of these provisions.



(5) Existing law provides that, in specified criminal proceedings, the district attorney may move to exclude from evidence the victim's current address and telephone number.

This bill would authorize the district attorney additionally to exclude from evidence the address and telephone number of the victim of spousal rape.

(6) Existing law provides a procedure to be followed in prosecutions for specified offenses in which evidence of sexual conduct of a complaining witness is offered to attack the credibility of the witness.

This bill would require that this procedure additionally be followed in a prosecution for spousal rape in which this type of evidence is offered.

(7) Existing law provides that, in prosecutions for specified offenses, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct is inadmissible by the defendant to prove consent by the complaining witness.

This bill additionally would make this provision applicable in prosecutions for spousal rape.

(8) Under existing law, the forms for the application for a marriage license are prescribed by the State Department of Health Services, and are required to include specified information.

This bill would require the form for the application for a marriage license to include a prescribed statement relating to the right of a spouse to be free from violence and abuse within the marriage.

(9) Existing law authorizes the courts to make determinations regarding the custody of minor children and to issue orders regarding visitation with those children in accordance with certain standards. Existing law makes these provisions relating to custody applicable to various proceedings in family law, including, among others, proceedings to determine custody or visitation pursuant to the Domestic Violence Prevention Act.

This bill would prohibit the construction of those provisions to authorize custody or visitation rights to be granted to any nonparent party to a Domestic Violence Prevention Act proceeding. This bill would declare the intent of the



Legislature to restate and clarify existing law with regard to the authority of a nonparent party to seek custody or visitation through a Domestic Violence Prevention Act proceeding.

(10) Existing law provides that a man is *presumed to be the natural father of a child if he meets specified conditions. Where the conditions establishing that presumption do not apply, a man is not presumed to be the natural father of a child if the child was conceived as a result of specified acts, including the act of rape.*

This bill *would delete the reference to the conditions establishing the presumption and* instead would provide that, except as specified in provisions of law governing the establishment of paternity by blood tests, a man is not presumed to be the natural father of a child if the child was conceived as a result of specified acts, including rape and spousal rape.

(11) Existing law requires state and local law enforcement agencies to make public specified information pertaining to crimes and provides that information about the victim of a specified crime may be withheld, as provided.

This bill would provide additionally that this information may be withheld about the victim of the crime of spousal rape.

(12) Existing law requires the Fair Employment and Housing Commission to provide to the local district attorney's office a copy of its decision and order if it finds that a party has engaged in an unlawful practice consisting of a specified act, including rape.

This bill additionally would require that a copy of the decision and order be provided to the local district attorney's office if there is a finding that a party has engaged in an unlawful practice consisting of spousal rape.

(13) Existing law defines the term "injury" for purposes of provisions governing the procedure by which crime victims may obtain restitution through compensation from the Restitution Fund. These provisions do not provide for restitution for emotional injury, unless it is accompanied by physical injury or the threat of physical injury. Under these provisions, a victim of a specified crime who sustains emotional injury is presumed to have sustained physical injury.



This bill additionally would provide that a victim of spousal rape who sustains emotional injury is presumed to have sustained physical injury for these purposes.

(14) Existing law requires the State Personnel Board to provide to the local district attorney's office a copy of its decision and order if it finds that a person has engaged in discrimination consisting of a specified act, including rape.

This bill additionally would require that a copy of the decision and order be provided to the local district attorney's office if there is a finding that a person has engaged in discrimination consisting of spousal rape.

(15) Existing law provides that, if probation is granted or the execution or imposition of a sentence is suspended for a person convicted of specified domestic violence offenses who previously has been convicted of such an offense, as provided, it shall be a condition thereof that the person be imprisoned in a county jail for not less than 96 hours and that he or she complete a batterer's treatment program.

This bill would increase this minimum time of imprisonment in the county jail to not less than 15 days. By increasing this minimum term of imprisonment in a county jail, this bill would impose a state-mandated local program.

(16) Existing law provides that, if probation is granted or the execution or imposition of a sentence is suspended for a person convicted of specified domestic violence offenses who previously has been convicted of two or more of these offenses, as provided, it shall be a condition thereof that the person be imprisoned in a county jail for not less than 30 days and that he or she complete a batterer's treatment program.

This bill would increase this minimum time of imprisonment in the county jail to not less than 60 days. By increasing this minimum term of imprisonment in a county jail, this bill would impose a state-mandated local program.

(17) Existing law sets forth certain rights of victims of, and witnesses to, crimes.

This bill additionally would provide that the victim of sexual assault has the right to have an advocate present at any evidentiary or physical examination or interview by law enforcement authorities.



(18) Existing law provides that a person convicted of a specified sex offense committed when that person was 18 years of age who has previously been convicted of any such felony may not be committed to the Youth Authority.

This bill would add the crime of spousal rape to the list of specified sex offenses for these purposes.

(19) Existing law requires the Youthful Offender Parole Board to send to specified individuals written notice of the parole consideration or review hearing, and a progress report, of a person committed to the Department of the Youth Authority for the commission of specified offenses.

This bill would add specified spousal rape offenses to the list of offenses specified for these purposes.

(20) Existing law requires the Youthful Offender Parole Board to send to specified individuals written notice of a petition and of any hearing set for a petition to have a person committed to state prison who is under the control of the Youth Authority for the commission of murder or specified rape offenses.

This bill additionally would require this notice to be sent concerning a person committed to state prison who is under the control of the Youth Authority for the commission of specified spousal rape offenses.

(21) Existing law provides that a mentally retarded person may not be committed to the State Department of Developmental Services pursuant to specified provisions of law, unless he or she is a danger to himself or herself or others. Dangerousness to self or others includes a finding of incompetence to stand trial when the defendant has been charged with specified crimes.

This bill would add specified spousal rape offenses to the list of specified crimes for these purposes.

(22) Existing law provides that a person found not guilty by reason of insanity of any of specified crimes may not purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control a firearm or other deadly weapon. A violation of this provision is punishable as a felony or a misdemeanor.

This bill additionally would provide that a person found not guilty by reason of insanity of specified spousal rape offenses



may not purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control a firearm or other deadly weapon. By expanding the scope of a crime, the bill would impose a state-mandated local program.

(23) Existing law defines the term “physical abuse” to include specified crimes for purposes of provisions requiring the reporting, investigating, and prosecuting of acts of abuse to elder or dependent adults.

This bill additionally would define “physical abuse” to include the crime of spousal rape for these purposes.

(24) 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 2236.1 of the Business and
2 Professions Code is amended to read:

3 2236.1. (a) A physician and surgeon’s certificate shall
4 be suspended automatically during any time that the
5 holder of the certificate is incarcerated after conviction
6 of a felony, regardless of whether the conviction has been
7 appealed. The Division of Medical Quality shall,
8 immediately upon receipt of the certified copy of the
9 record of conviction, determine whether the certificate
10 of the physician and surgeon has been automatically
11 suspended by virtue of his or her incarceration, and if so,
12 the duration of that suspension. The division shall notify
13 the physician and surgeon of the license suspension and
14 of his or her right to elect to have the issue of penalty
15 heard as provided in this section.

16 (b) Upon receipt of the certified copy of the record of
17 conviction, if after a hearing it is determined therefrom
18 that the felony of which the licensee was convicted was



1 substantially related to the qualifications, functions, or
2 duties of a physician and surgeon, the Division of Medical
3 Quality shall suspend the license until the time for appeal
4 has elapsed, if no appeal has been taken, or until the
5 judgment of conviction has been affirmed on appeal or
6 has otherwise become final, and until further order of the
7 division. The issue of substantial relationship shall be
8 heard by an administrative law judge from the Medical
9 Quality Hearing Panel sitting alone or with a panel of the
10 division, in the discretion of the division.

11 (c) Notwithstanding subdivision (b), a conviction of
12 any crime referred to in Section 2237, or a conviction of
13 Section 187, 261, 262, or 288 of the Penal Code, shall be
14 conclusively presumed to be substantially related to the
15 qualifications, functions, or duties of a physician and
16 surgeon and no hearing shall be held on this issue. Upon
17 its own motion or for good cause shown, the division may
18 decline to impose or may set aside the suspension when
19 it appears to be in the interest of justice to do so, with due
20 regard to maintaining the integrity of and confidence in
21 the medical profession.

22 (d) (1) Discipline may be ordered in accordance with
23 Section 2227, or the Division of Licensing may order the
24 denial of the license when the time for appeal has elapsed,
25 the judgment of conviction has been affirmed on appeal,
26 or an order granting probation is made suspending the
27 imposition of sentence, irrespective of a subsequent order
28 under Section 1203.4 of the Penal Code allowing the
29 person to withdraw his or her plea of guilty and to enter
30 a plea of not guilty, setting aside the verdict of guilty, or
31 dismissing the accusation, complaint, information, or
32 indictment.

33 (2) The issue of penalty shall be heard by an
34 administrative law judge from the Medical Quality
35 Hearing Panel sitting alone or with a panel of the division,
36 in the discretion of the division. The hearing shall not be
37 had until the judgment of conviction has become final or,
38 irrespective of a subsequent order under Section 1203.4
39 of the Penal Code, an order granting probation has been
40 made suspending the imposition of sentence; except that



1 a licensee may, at his or her option, elect to have the issue
2 of penalty decided before those time periods have
3 elapsed. Where the licensee so elects, the issue of penalty
4 shall be heard in the manner described in this section at
5 the hearing to determine whether the conviction was
6 substantially related to the qualifications, functions, or
7 duties of a physician and surgeon. If the conviction of a
8 licensee who has made this election is overturned on
9 appeal, any discipline ordered pursuant to this section
10 shall automatically cease. Nothing in this subdivision shall
11 prohibit the division from pursuing disciplinary action
12 based on any cause other than the overturned conviction.

13 (e) The record of the proceedings resulting in the
14 conviction, including a transcript of the testimony
15 therein, may be received in evidence.

16 (f) The other provisions of this article setting forth a
17 procedure for the suspension or revocation of a physician
18 and surgeon's certificate shall not apply to proceedings
19 conducted pursuant to this section.

20 SEC. 2. Section 44237 of the Education Code is
21 amended to read:

22 44237. (a) Commencing October 1, 1985, every
23 person, firm, association, partnership, or corporation
24 offering or conducting private school instruction on the
25 elementary or high school level shall require each new
26 employee having contact with minor pupils and not
27 possessing a valid California state teaching credential, or
28 not currently licensed by another state agency that
29 requires a criminal record summary, to submit on or
30 before the first day of his or her employment, two sets of
31 fingerprints to the Department of Justice for the purpose
32 of obtaining a criminal record summary from the
33 Department of Justice and the Federal Bureau of
34 Investigation. This requirement is a condition of
35 employment. It is the intent of the Legislature under this
36 section to assist in the employment decision. This section
37 shall not be construed, however, to prohibit the
38 employment of any person based upon his or her criminal
39 record.



1 (b) The Department of Justice shall furnish a criminal
2 record summary to the employer designated by a new
3 employee submitting fingerprints pursuant to
4 subdivision (a). The criminal record summary shall
5 contain only arrests resulting in a conviction and arrests
6 pending final adjudication. The criminal record summary
7 furnished to the employer shall be maintained by the
8 employer in a secured file separate from personnel files,
9 and shall be maintained in accordance with regulations
10 for Criminal Offender Record Information Security as
11 specified in Subchapter 7 (commencing with Section
12 700) of Chapter 1 of Title 11 of the California Code of
13 Regulations.

14 (c) The Department of Justice shall review the
15 criminal record summary it obtains from the Federal
16 Bureau of Investigation to ascertain whether or not a new
17 employee has a conviction record or an arrest pending
18 final adjudication for any sex offense, controlled
19 substance offense, or crime of violence. The Department
20 of Justice shall provide written notification to the private
21 school employer only as to whether or not a new
22 employee has any convictions or arrests pending final
23 adjudication for any of those crimes, but shall not provide
24 information identifying any offense for which an
25 employee was convicted or arrested.

26 (d) The employer may request subsequent arrest
27 service from the Department of Justice as is provided
28 under Section 11105.2 of the Penal Code.

29 (e) As used in this section, the following terms shall
30 have the following definitions:

31 (1) "Crime of violence" means a conviction for any of
32 the offenses specified in subdivision (c) of Section 667.5
33 of the Penal Code, or a violation or attempted violation
34 of Chapter 8 (commencing with Section 236) or Chapter
35 9 (commencing with Section 240) of Title 8 of Part 1 of the
36 Penal Code.

37 Out-of-state convictions for any violation or attempted
38 violation of any crime prescribed in this paragraph shall
39 also be deemed a crime of violence.



1 (2) “Controlled substance offense” means a felony
2 conviction for a violation or attempted violation of
3 Division 10 (commencing with Section 11000) of the
4 Health and Safety Code.

5 Out-of-state convictions for any violation or attempted
6 violation of any crime prescribed in this paragraph shall
7 also be deemed a crime of violence.

8 (3) “Employer” means every person, firm, association,
9 partnership, or corporation offering or conducting
10 private school instruction on the elementary or high
11 school level.

12 (4) “New employee” means any person hired to work
13 in a private school on or after July 1, 1985, on a regular,
14 paid full-time or regular, paid part-time basis who will
15 have contact with minor pupils.

16 (5) “Sex offense” means a conviction for any violation
17 or attempted violation of Section 220, 261, 261.5, 262, 264,
18 266, 266j, 267, 273a, 273d, 285, 286, 288, 289, 311.2, 311.3,
19 311.4, 313.1, 314, 647b, or 647d of the Penal Code, or
20 former Section 647a of the Penal Code, or commitment
21 as a mentally disordered sex offender under former
22 Article 1 (commencing with Section 6300) of Chapter 2
23 of Part 2 of the Welfare and Institutions Code as repealed
24 by Chapter 928 of the Statutes of 1981.

25 Out-of-state convictions for any violation or attempted
26 violation of any crime prescribed in this paragraph shall
27 also be deemed a sex offense.

28 (f) Any new employee who wishes to have his or her
29 employer consider information relevant to his or her
30 criminal record, such as evidence of rehabilitation, shall
31 be responsible for submitting these facts or
32 documentation to his or her employer.

33 (g) The Commission on Teacher Credentialing shall
34 send on a monthly basis to each private school a list of all
35 teachers who have had their state teaching credential
36 revoked or suspended. The list shall be identical to the list
37 compiled for public schools in the state. The commission
38 shall also send on a quarterly basis a complete and
39 updated list of all teachers who have had their teaching
40 credentials revoked or suspended, excluding teachers



1 who have had their credentials reinstated, or who are
2 deceased.

3 (h) The Department of Justice may charge each
4 applicant for a criminal record summary a reasonable fee
5 to cover costs associated with the processing, reviewing,
6 and supplying of the criminal record summary as
7 required by this section. In no event, shall the fee exceed
8 the actual costs incurred by the department.

9 SEC. 3. Section 67380 of the Education Code is
10 amended to read:

11 67380. (a) The governing board of each community
12 college district, the Trustees of the California State
13 University, the Board of Directors of the Hastings College
14 of the Law, the Regents of the University of California,
15 and the governing board of any postsecondary institution
16 receiving public funds for student financial assistance
17 shall do all of the following:

18 (1) Require the appropriate officials at each campus
19 within their respective jurisdictions to compile records of
20 both of the following:

21 (A) All occurrences reported to campus police,
22 campus security personnel, or campus safety authorities
23 of, and arrests for, crimes that are committed on campus
24 and that involve violence, hate violence, theft or
25 destruction of property, illegal drugs, or alcohol
26 intoxication.

27 (B) All occurrences of noncriminal acts of hate
28 violence reported to, and for which a written report is
29 prepared by, designated campus authorities.

30 (2) Require any written record of a noncriminal act of
31 hate violence to include, but not be limited to, the
32 following:

33 (A) A description of the act of hate violence.

34 (B) Victim characteristics.

35 (C) Offender characteristics, if known.

36 (3) Make the information concerning the crimes
37 compiled pursuant to subparagraph (A) of paragraph (1)
38 available within two business days following the request
39 of any student or employee of, or applicant for admission
40 to, any campus within their respective jurisdictions, or to



1 the media, unless the information is the type of
2 information exempt from disclosure pursuant to
3 subdivision (f) of Section 6254 of the Government Code,
4 in which case the information is not required to be
5 disclosed. Notwithstanding paragraph (2) of subdivision
6 (f) of Section 6254 of the Government Code, the name of
7 a victim of any crime defined by Section 261, 262, 264,
8 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or
9 422.75 of the Penal Code shall not be disclosed without the
10 permission of the victim, or the victim's parent or
11 guardian if the victim is a minor.

12 For purposes of this paragraph and subparagraph (A)
13 of paragraph (1), the campus police, campus security
14 personnel, and campus safety authorities described in
15 subparagraph (A) of paragraph (1) shall be included
16 within the meaning of "state or local police agency" and
17 "state and local law enforcement agency," as those terms
18 are used in subdivision (f) of Section 6254 of the
19 Government Code.

20 (4) Require the appropriate officials at each campus
21 within their respective jurisdictions to prepare,
22 prominently post, and copy for distribution on request a
23 campus safety plan that sets forth all of the following: the
24 availability and location of security personnel, methods
25 for summoning assistance of security personnel, any
26 special safeguards that have been established for
27 particular facilities or activities, any actions taken in the
28 preceding 18 months to increase safety, and any changes
29 in safety precautions expected to be made during the next
30 24 months. For the purposes of this section, posting and
31 distribution may be accomplished by including relevant
32 safety information in a student handbook or brochure
33 that is made generally available to students.

34 (5) Require the appropriate officials at each campus
35 within their respective jurisdictions to report information
36 compiled pursuant to paragraph (1) relating to hate
37 violence to the governing board, trustees, board of
38 directors, or regents, as the case may be. The governing
39 board, trustees, board of directors, or regents, as the case
40 may be, shall, upon collection of that information from all



1 of the campuses within their jurisdiction, transmit a
2 report containing a compilation of that information to the
3 California Postsecondary Education Commission no later
4 than January 1 of each year, commencing January 1, 1993.
5 The commission shall submit a report to the Legislature
6 and the Governor on July 1, 1993, and every two years
7 thereafter, on the type and number of incidents of hate
8 violence occurring in institutions of public higher
9 education in California. It is the intent of the Legislature
10 that the governing board of each community college
11 district, the Trustees of the California State University,
12 the Board of Directors of the Hastings College of the Law,
13 the Regents of the University of California, and the
14 governing board of any postsecondary institution
15 receiving public funds for student financial assistance
16 establish guidelines for identifying and reporting
17 occurrences of hate violence. It is the intent of the
18 Legislature that the guidelines established by these
19 institutions of higher education be as consistent with each
20 other as possible. These guidelines shall be developed in
21 consultation with the California Postsecondary
22 Education Commission, the Department of Fair
23 Employment and Housing, and the California Association
24 of Human Rights Organizations. The report shall include,
25 but not be limited to, the following:

26 (A) A comparison of incidents occurring in the year
27 being reported to previous years for which there is hate
28 violence data.

29 (B) To the extent possible, a comparison of incidents
30 of hate violence occurring at community colleges, the
31 California State University, the Hastings College of the
32 Law, the University of California, and postsecondary
33 institutions receiving funds for student financial
34 assistance with incidents occurring at colleges and
35 universities in other states and private universities in
36 California.

37 (C) Findings and recommendations to the Legislature
38 on the means of addressing hate violence at community
39 colleges, the California State University, the Hastings
40 College of the Law, the University of California, and



1 postsecondary institutions receiving public funds for
2 student financial assistance.

3 (b) Any person who is refused information required to
4 be made available pursuant to subparagraph (A) of
5 paragraph (1) of subdivision (a) may maintain a civil
6 action for damages against any institution that refuses to
7 provide the information, and the court shall award that
8 person an amount not to exceed one thousand dollars
9 (\$1,000) if the court finds that the institution refused to
10 provide the information.

11 (c) For purposes of this section, “hate violence” means
12 any act of physical intimidation or physical harassment,
13 physical force or physical violence, or the threat of
14 physical force or physical violence, that is directed against
15 any person or group of persons, or the property of any
16 person or group of persons because of the ethnicity, race,
17 national origin, religion, sex, sexual orientation, disability,
18 or political or religious beliefs of that person or group.

19 (d) This section does not apply to the governing board
20 of any private postsecondary institution receiving funds
21 for student financial assistance with a full-time
22 enrollment of less than 1,000 students.

23 (e) This section shall apply to a campus of one of the
24 public postsecondary educational systems identified in
25 subdivision (a) only if that campus has a full-time
26 equivalent enrollment of more than 1,000 students.

27 (f) Notwithstanding any other provision of this
28 section, this section shall not apply to the California
29 Community Colleges unless and until the Legislature
30 makes funds available to the California Community
31 Colleges for the purposes of this section.

32 SEC. 4. Section 87010 of the Education Code is
33 amended to read:

34 87010. “Sex offense,” as used in Sections 87405, 88022,
35 and 88123, means any one or more of the offenses listed
36 below:

37 (a) Any offense defined in Section 261.5, 266, 267, 285,
38 286, 288, 288a, 647.6, or former Section 647a, ~~subdivision~~
39 ~~2 or 3~~ *paragraph (2) or (3) of subdivision (a)* of Section



1 261, paragraph (1) or (2) of subdivision (a) of Section 262,
2 or subdivision (a) or (d) of Section 647 of the Penal Code.

3 (b) Any offense defined in former subdivision 5 of
4 former Section 647 of the Penal Code repealed by
5 Chapter 560 of the Statutes of 1961, or any offense defined
6 in former subdivision 2 of former Section 311 of the Penal
7 Code repealed by Chapter 2147 of the Statutes of 1961, if
8 the offense defined in those sections was committed prior
9 to September 15, 1961, to the same extent that such an
10 offense committed prior to that date was a sex offense for
11 the purposes of this section prior to September 15, 1961.

12 (c) Any offense defined in Section 314 of the Penal
13 Code committed on or after September 15, 1961.

14 (d) Any offense defined in former subdivision 1 of
15 former Section 311 of the Penal Code repealed by
16 Chapter 2147 of the Statutes of 1961 committed on or after
17 September 7, 1955, and prior to September 15, 1961.

18 (e) Any offense involving lewd and lascivious conduct
19 under Section 272 of the Penal Code committed on or
20 after September 15, 1961.

21 (f) Any offense involving lewd and lascivious conduct
22 under former Section 702 of the Welfare and Institutions
23 Code repealed by Chapter 1616 of the Statutes of 1961, if
24 the offense was committed prior to September 15, 1961,
25 to the same extent that such an offense committed prior
26 to that date was a sex offense for the purposes of this
27 section prior to September 15, 1961.

28 (g) Any offense defined in Section 286 or 288a of the
29 Penal Code prior to the effective date of the amendment
30 of either section enacted at the 1975–76 Regular Session
31 of the Legislature committed prior to the effective date
32 of the amendment.

33 (h) Any attempt to commit any of the
34 above-mentioned offenses.

35 (i) Any offense committed or attempted in any other
36 state that, if committed or attempted in this state, would
37 have been punishable as one or more of the
38 above-mentioned offenses.

39 SEC. 5. Section 352.1 of the Evidence Code is
40 amended to read:



1 352.1. In any criminal proceeding under Section 261,
2 262, or 264.1, subdivision (d) of Section 286, or subdivision
3 (d) of Section 288a of the Penal Code, or in any criminal
4 proceeding under subdivision (c) of Section 286 or
5 subdivision (c) of Section 288a of the Penal Code in which
6 the defendant is alleged to have compelled the
7 participation of the victim by force, violence, duress,
8 menace, or threat of great bodily harm, the district
9 attorney may, upon written motion with notice to the
10 defendant or the defendant's attorney, if he or she is
11 represented by an attorney, within a reasonable time
12 prior to any hearing, move to exclude from evidence the
13 current address and telephone number of any victim at
14 the hearing.

15 The court may order that evidence of the victim's
16 current address and telephone number be excluded from
17 any hearings conducted pursuant to the criminal
18 proceeding if the court finds that the probative value of
19 the evidence is outweighed by the creation of substantial
20 danger to the victim.

21 Nothing in this section shall abridge or limit the
22 defendant's right to discover or investigate the
23 information.

24 SEC. 6. Section 782 of the Evidence Code is amended
25 to read:

26 782. (a) In any prosecution under Section 261, 262,
27 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for
28 assault with intent to commit, attempt to commit, or
29 conspiracy to commit any crime defined in any of those
30 sections, except where the crime is alleged to have
31 occurred in a local detention facility, as defined in Section
32 6031.4, or in a state prison, as defined in Section 4504, if
33 evidence of sexual conduct of the complaining witness is
34 offered to attack the credibility of the complaining
35 witness under Section 780, the following procedure shall
36 be followed:

37 (1) A written motion shall be made by the defendant
38 to the court and prosecutor stating that the defense has
39 an offer of proof of the relevancy of evidence of the sexual
40 conduct of the complaining witness proposed to be



1 presented and its relevancy in attacking the credibility of
2 the complaining witness.

3 (2) The written motion shall be accompanied by an
4 affidavit in which the offer of proof shall be stated.

5 (3) If the court finds that the offer of proof is sufficient,
6 the court shall order a hearing out of the presence of the
7 jury, if any, and at the hearing allow the questioning of the
8 complaining witness regarding the offer of proof made by
9 the defendant.

10 (4) At the conclusion of the hearing, if the court finds
11 that evidence proposed to be offered by the defendant
12 regarding the sexual conduct of the complaining witness
13 is relevant pursuant to Section 780, and is not inadmissible
14 pursuant to Section 352 of this code, the court may make
15 an order stating what evidence may be introduced by the
16 defendant, and the nature of the questions to be
17 permitted. The defendant may then offer evidence
18 pursuant to the order of the court.

19 (b) As used in this section, “complaining witness”
20 means the alleged victim of the crime charged, the
21 prosecution of which is subject to this section.

22 SEC. 7. Section 1103 of the Evidence Code is
23 amended to read:

24 1103. (a) In a criminal action, evidence of the
25 character or a trait of character (in the form of an opinion,
26 evidence of reputation, or evidence of specific instances
27 of conduct) of the victim of the crime for which the
28 defendant is being prosecuted is not made inadmissible
29 by Section 1101 if the evidence is:

30 (1) Offered by the defendant to prove conduct of the
31 victim in conformity with the character or trait of
32 character.

33 (2) Offered by the prosecution to rebut evidence
34 adduced by the defendant under paragraph (1).

35 (b) In a criminal action, evidence of the defendant’s
36 character for violence or trait of character for violence
37 (in the form of an opinion, evidence of reputation, or
38 evidence of specific instances of conduct) is not made
39 inadmissible by Section 1101 if the evidence is offered by
40 the prosecution to prove conduct of the defendant in



1 conformity with the character or trait of character and is
2 offered after evidence that the victim had a character for
3 violence or a trait of character tending to show violence
4 has been adduced by the defendant under paragraph (1)
5 of subdivision (a).

6 (c) (1) Notwithstanding any other provision of this
7 code to the contrary, and except as provided in this
8 subdivision, in any prosecution under Section 261, 262, or
9 264.1 of the Penal Code, or under Section 286, 288a, or 289
10 of the Penal Code, or for assault with intent to commit,
11 attempt to commit, or conspiracy to commit a crime
12 defined in any of those sections, except where the crime
13 is alleged to have occurred in a local detention facility, as
14 defined in Section 6031.4, or in a state prison, as defined
15 in Section 4504, opinion evidence, reputation evidence,
16 and evidence of specific instances of the complaining
17 witness' sexual conduct, or any of that evidence, is not
18 admissible by the defendant in order to prove consent by
19 the complaining witness.

20 (2) Paragraph (1) shall not be applicable to evidence
21 of the complaining witness' sexual conduct with the
22 defendant.

23 (3) If the prosecutor introduces evidence, including
24 testimony of a witness, or the complaining witness as a
25 witness gives testimony, and that evidence or testimony
26 relates to the complaining witness' sexual conduct, the
27 defendant may cross-examine the witness who gives the
28 testimony and offer relevant evidence limited
29 specifically to the rebuttal of the evidence introduced by
30 the prosecutor or given by the complaining witness.

31 (4) Nothing in this subdivision shall be construed to
32 make inadmissible any evidence offered to attack the
33 credibility of the complaining witness as provided in
34 Section 782.

35 (5) As used in this section, "complaining witness"
36 means the alleged victim of the crime charged, the
37 prosecution of which is subject to this subdivision.

38 SEC. 8. Section 355 of the Family Code is amended to
39 read:



1 355. (a) The forms for the application for a marriage
2 license and the marriage license shall be prescribed by
3 the State Department of Health Services, and shall be
4 adapted to set forth the facts required in this part.

5 (b) The form for the application for a marriage license
6 shall include an affidavit on the back, which the
7 applicants shall sign, affirming that they have received
8 the brochure provided for in Section 358.

9 (c) The affidavit required by subdivision (b) shall
10 state:

11 AFFIDAVIT

12 I acknowledge that I have received the brochure titled
13 _____
14 _____

15 _____
16 Signature of Bride

_____ Date

17 _____
18 Signature of Groom

_____ Date

19
20 (d) The form for the application for a marriage license
21 shall include the following statement:
22

23 “The laws of this state affirm your right to enter into this
24 marriage and at the same time to live within the marriage
25 free from violence and abuse. Neither you nor your
26 spouse is the property of the other. The laws against
27 physical, emotional, psychological, and sexual abuse, and
28 battery and assault, as well as other provisions of the
29 criminal laws of this state, are applicable to spouses and
30 other family members, and violations of these laws are
31 punishable by either fine or imprisonment, or both.”

32 SEC. 9. Section 3021 of the Family Code is amended
33 to read:

34 3021. This part applies in any of the following:

35 (a) A proceeding for dissolution of marriage.

36 (b) A proceeding for nullity of marriage.

37 (c) A proceeding for legal separation of the parties.

38 (d) An action for exclusive custody pursuant to Section
39 3120.



1 (e) A proceeding to determine custody or visitation in
2 a proceeding pursuant to the Domestic Violence
3 Prevention Act (Division 10 (commencing with Section
4 6200).

5 Nothing in this subdivision shall be construed to
6 authorize custody or visitation rights to be granted to any
7 nonparent party to a Domestic Violence Prevention Act
8 proceeding. By amending this subdivision during the
9 1995–96 Regular Session, it is the intent of the Legislature
10 to restate existing law, and to clarify that nonparent
11 parties may not seek a determination of custody or
12 visitation rights through a Domestic Violence Prevention
13 Act proceeding, but only through a proceeding for
14 dissolution or legal separation, or an action to determine
15 paternity in accordance with the Uniform Parentage Act
16 (Part 3 (commencing with Section 7600) of Division 12).

17 (f) A proceeding to determine custody or visitation in
18 an action pursuant to the Uniform Parentage Act (Part 3
19 (commencing with Section 7600) of Division 12).

20 SEC. 10. Section 7611.5 of the Family Code is
21 amended to read:

22 7611.5. ~~Where Section 7611 does not apply,~~ a A man
23 shall not be presumed to be the natural father of a child
24 if either of the following is true:

25 (a) Except as provided in Chapter 2 (commencing
26 with Section 7550), the child was conceived as a result of
27 an act in violation of Section 261 or 262 of the Penal Code
28 and the father was convicted of that violation.

29 (b) The child was conceived as a result of an act in
30 violation of Section 261.5 of the Penal Code, the father
31 was convicted of that violation, and the mother was under
32 the age of 15 years and the father was 21 years of age or
33 older at the time of conception.

34 SEC. 11. Section 6254 of the Government Code is
35 amended to read:

36 6254. Except as provided in Sections 6254.7 and
37 6254.13, nothing in this chapter shall be construed to
38 require disclosure of records that are any of the following:

39 (a) Preliminary drafts, notes, or interagency or
40 intra-agency memoranda that are not retained by the



1 public agency in the ordinary course of business,
2 provided that the public interest in withholding those
3 records clearly outweighs the public interest in
4 disclosure.

5 (b) Records pertaining to pending litigation to which
6 the public agency is a party, or to claims made pursuant
7 to Division 3.6 (commencing with Section 810), until the
8 pending litigation or claim has been finally adjudicated or
9 otherwise settled.

10 (c) Personnel, medical, or similar files, the disclosure
11 of which would constitute an unwarranted invasion of
12 personal privacy.

13 (d) Contained in or related to:

14 (1) Applications filed with any state agency
15 responsible for the regulation or supervision of the
16 issuance of securities or of financial institutions,
17 including, but not limited to, banks, savings and loan
18 associations, industrial loan companies, credit unions, and
19 insurance companies.

20 (2) Examination, operating, or condition reports
21 prepared by, on behalf of, or for the use of, any state
22 agency referred to in paragraph (1).

23 (3) Preliminary drafts, notes, or interagency or
24 intra-agency communications prepared by, on behalf of,
25 or for the use of, any state agency referred to in paragraph
26 (1).

27 (4) Information received in confidence by any state
28 agency referred to in paragraph (1).

29 (e) Geological and geophysical data, plant production
30 data, and similar information relating to utility systems
31 development, or market or crop reports, which are
32 obtained in confidence from any person.

33 (f) Records of complaints to, or investigations
34 conducted by, or records of intelligence information or
35 security procedures of, the office of the Attorney General
36 and the Department of Justice, and any state or local
37 police agency, or any investigatory or security files
38 compiled by any other state or local police agency, or any
39 investigatory or security files compiled by any other state
40 or local agency for correctional, law enforcement, or



1 licensing purposes, except that state and local law
2 enforcement agencies shall disclose the names and
3 addresses of persons involved in, or witnesses other than
4 confidential informants to, the incident, the description
5 of any property involved, the date, time, and location of
6 the incident, all diagrams, statements of the parties
7 involved in the incident, the statements of all witnesses,
8 other than confidential informants, to the victims of an
9 incident, or an authorized representative thereof, an
10 insurance carrier against which a claim has been or might
11 be made, and any person suffering bodily injury or
12 property damage or loss, as the result of the incident
13 caused by arson, burglary, fire, explosion, larceny,
14 robbery, carjacking, vandalism, vehicle theft, or a crime
15 as defined by subdivision (c) of Section 13960, unless the
16 disclosure would endanger the safety of a witness or other
17 person involved in the investigation, or unless disclosure
18 would endanger the successful completion of the
19 investigation or a related investigation. However,
20 nothing in this division shall require the disclosure of that
21 portion of those investigative files that reflect the analysis
22 or conclusions of the investigating officer.

23 Other provisions of this subdivision notwithstanding,
24 state and local law enforcement agencies shall make
25 public the following information, except to the extent
26 that disclosure of a particular item of information would
27 endanger the safety of a person involved in an
28 investigation or would endanger the successful
29 completion of the investigation or a related investigation:

30 (1) The full name and occupation of every individual
31 arrested by the agency, the individual's physical
32 description including date of birth, color of eyes and hair,
33 sex, height and weight, the time and date of arrest, the
34 time and date of booking, the location of the arrest, the
35 factual circumstances surrounding the arrest, the amount
36 of bail set, the time and manner of release or the location
37 where the individual is currently being held, and all
38 charges the individual is being held upon, including any
39 outstanding warrants from other jurisdictions and parole
40 or probation holds.



1 (2) Subject to the restrictions imposed by Section 841.5
2 of the Penal Code, the time, substance, and location of all
3 complaints or requests for assistance received by the
4 agency and the time and nature of the response thereto,
5 including, to the extent the information regarding crimes
6 alleged or committed or any other incident investigated
7 is recorded, the time, date, and location of occurrence,
8 the time and date of the report, the name and age of the
9 victim, the factual circumstances surrounding the crime
10 or incident, and a general description of any injuries,
11 property, or weapons involved. The name of a victim of
12 any crime defined by Section 220, 261, 262, 264, 264.1,
13 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or
14 646.9 of the Penal Code may be withheld at the victim's
15 request, or at the request of the victim's parent or
16 guardian if the victim is a minor. When a person is the
17 victim of more than one crime, information disclosing
18 that the person is a victim of a crime defined by Section
19 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289,
20 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be
21 deleted at the request of the victim, or the victim's parent
22 or guardian if the victim is a minor, in making the report
23 of the crime, or of any crime or incident accompanying
24 the crime, available to the public in compliance with the
25 requirements of this paragraph.

26 (3) Subject to the restrictions of Section 841.5 of the
27 Penal Code and this subdivision, the current address of
28 every individual arrested by the agency and the current
29 address of the victim of a crime, where the requester
30 declares under penalty of perjury that the request is
31 made for a scholarly, journalistic, political, or
32 governmental purpose, or that the request is made for
33 investigation purposes by a licensed private investigator
34 as described in Chapter 11.3 (commencing with Section
35 7512) of Division 3 of the Business and Professions Code,
36 except that the address of the victim of any crime defined
37 by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286,
38 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal
39 Code shall remain confidential. Address information
40 obtained pursuant to this paragraph shall not be used



1 directly or indirectly to sell a product or service to any
2 individual or group of individuals, and the requester shall
3 execute a declaration to that effect under penalty of
4 perjury.

5 (g) Test questions, scoring keys, and other
6 examination data used to administer a licensing
7 examination, examination for employment, or academic
8 examination, except as provided for in Chapter 3
9 (commencing with Section 99150) of Part 65 of the
10 Education Code.

11 (h) The contents of real estate appraisals or
12 engineering or feasibility estimates and evaluations made
13 for or by the state or local agency relative to the
14 acquisition of property, or to prospective public supply
15 and construction contracts, until all of the property has
16 been acquired or all of the contract agreement obtained.
17 However, the law of eminent domain shall not be affected
18 by this provision.

19 (i) Information required from any taxpayer in
20 connection with the collection of local taxes that is
21 received in confidence and the disclosure of the
22 information to other persons would result in unfair
23 competitive disadvantage to the person supplying the
24 information.

25 (j) Library circulation records kept for the purpose of
26 identifying the borrower of items available in libraries,
27 and library and museum materials made or acquired and
28 presented solely for reference or exhibition purposes.
29 The exemption in this subdivision shall not apply to
30 records of fines imposed on the borrowers.

31 (k) Records the disclosure of which is exempted or
32 prohibited pursuant to federal or state law, including, but
33 not limited to, provisions of the Evidence Code relating
34 to privilege.

35 (l) Correspondence of and to the Governor or
36 employees of the Governor's office or in the custody of or
37 maintained by the Governor's legal affairs secretary,
38 provided that public records shall not be transferred to
39 the custody of the Governor's legal affairs secretary to
40 evade the disclosure provisions of this chapter.



1 (m) In the custody of or maintained by the Legislative
2 Counsel, except those records in the public data base
3 maintained by the Legislative Counsel that are described
4 in Section 10248.

5 (n) Statements of personal worth or personal financial
6 data required by a licensing agency and filed by an
7 applicant with the licensing agency to establish his or her
8 personal qualification for the license, certificate, or
9 permit applied for.

10 (o) Financial data contained in applications for
11 financing under Division 27 (commencing with Section
12 44500) of the Health and Safety Code, where an
13 authorized officer of the California Pollution Control
14 Financing Authority determines that disclosure of the
15 financial data would be competitively injurious to the
16 applicant and the data is required in order to obtain
17 guarantees from the United States Small Business
18 Administration. The California Pollution Control
19 Financing Authority shall adopt rules for review of
20 individual requests for confidentiality under this section
21 and for making available to the public those portions of
22 an application which are subject to disclosure under this
23 chapter.

24 (p) Records of state agencies related to activities
25 governed by Chapter 10.3 (commencing with Section
26 3512), Chapter 10.5 (commencing with Section 3525),
27 and Chapter 12 (commencing with Section 3560) of
28 Division 4 of Title 1, that reveal a state agency's
29 deliberative processes, impressions, evaluations,
30 opinions, recommendations, meeting minutes, research,
31 work products, theories, or strategy, or that provide
32 instruction, advice, or training to employees who do not
33 have full collective bargaining and representation rights
34 under these chapters. Nothing in this subdivision shall be
35 construed to limit the disclosure duties of a state agency
36 with respect to any other records relating to the activities
37 governed by the employee relations acts referred to in
38 this subdivision.

39 (q) Records of state agencies related to activities
40 governed by Articles 2.6 (commencing with Section



1 14081), 2.8 (commencing with Section 14087.5), and 2.91
2 (commencing with Section 14089) of Chapter 7 of Part 3
3 of Division 9 of the Welfare and Institutions Code, that
4 reveal the special negotiator's deliberative processes,
5 discussions, communications, or any other portion of the
6 negotiations with providers of health care services,
7 impressions, opinions, recommendations, meeting
8 minutes, research, work product, theories, or strategy, or
9 that provide instruction, advice, or training to employees.

10 Except for the portion of a contract containing the rates
11 of payment, contracts for inpatient services entered into
12 pursuant to these articles, on or after April 1, 1984, shall
13 be open to inspection one year after they are fully
14 executed. In the event that a contract for inpatient
15 services that is entered into prior to April 1, 1984, is
16 amended on or after April 1, 1984, the amendment,
17 except for any portion containing the rates of payment,
18 shall be open to inspection one year after it is fully
19 executed. If the California Medical Assistance
20 Commission enters into contracts with health care
21 providers for other than inpatient hospital services, those
22 contracts shall be open to inspection one year after they
23 are fully executed.

24 Three years after a contract or amendment is open to
25 inspection under this subdivision, the portion of the
26 contract or amendment containing the rates of payment
27 shall be open to inspection.

28 Notwithstanding any other provision of law, the entire
29 contract or amendment shall be open to inspection by the
30 Joint Legislative Audit Committee. The Joint Legislative
31 Audit Committee shall maintain the confidentiality of the
32 contracts and amendments until the time a contract or
33 amendment is fully open to inspection by the public.

34 (r) Records of Native American graves, cemeteries,
35 and sacred places maintained by the Native American
36 Heritage Commission.

37 (s) A final accreditation report of the Joint
38 Commission on Accreditation of Hospitals that has been
39 transmitted to the State Department of Health Services



1 pursuant to subdivision (b) of Section 1282 of the Health
2 and Safety Code.

3 (t) Records of a local hospital district, formed pursuant
4 to Division 23 (commencing with Section 32000) of the
5 Health and Safety Code, or the records of a municipal
6 hospital, formed pursuant to Article 7 (commencing with
7 Section 37600) or Article 8 (commencing with Section
8 37650) of Chapter 5 of Division 3 of Title 4 of this code,
9 that relate to any contract with an insurer or nonprofit
10 hospital service plan for inpatient or outpatient services
11 for alternative rates pursuant to Section 10133 or 11512 of
12 the Insurance Code. However, the record shall be open
13 to inspection within one year after the contract is fully
14 executed.

15 (u) Information contained in applications for licenses
16 to carry firearms issued pursuant to Section 12050 of the
17 Penal Code by the sheriff of a county or the chief or other
18 head of a municipal police department that indicates
19 when or where the applicant is vulnerable to attack or
20 that concerns the applicant's medical or psychological
21 history or that of members of his or her family.

22 (v) (1) Records of the Major Risk Medical Insurance
23 Program related to activities governed by Part 6.3
24 (commencing with Section 12695), and Part 6.5
25 (commencing with Section 12700), of Division 2 of the
26 Insurance Code, and that reveal the deliberative
27 processes, discussions, communications, or any other
28 portion of the negotiations with health plans, or the
29 impressions, opinions, recommendations, meeting
30 minutes, research, work product, theories, or strategy of
31 the board or its staff, or records that provide instructions,
32 advice, or training to employees.

33 (2) (A) Except for the portion of a contract that
34 contains the rates of payment, contracts for health
35 coverage entered into pursuant to Part 6.3 (commencing
36 with Section 12695), or Part 6.5 (commencing with
37 Section 12700), of Division 2 of the Insurance Code, on or
38 after July 1, 1991, shall be open to inspection one year
39 after they have been fully executed.



1 (B) In the event that a contract for health coverage
2 that is entered into prior to July 1, 1991, is amended on or
3 after July 1, 1991, the amendment, except for any portion
4 containing the rates of payment shall be open to
5 inspection one year after the amendment has been fully
6 executed.

7 (3) Three years after a contract or amendment is open
8 to inspection pursuant to this subdivision, the portion of
9 the contract or amendment containing the rates of
10 payment shall be open to inspection.

11 (4) Notwithstanding any other provision of law, the
12 entire contract or amendments to a contract shall be open
13 to inspection by the Joint Legislative Audit Committee.
14 The Joint Legislative Audit Committee shall maintain the
15 confidentiality of the contracts and amendments thereto,
16 until the contract or amendments to a contract is open to
17 inspection pursuant to paragraph (3).

18 (w) (1) Records of the Major Risk Medical Insurance
19 Program related to activities governed by Chapter 14
20 (commencing with Section 10700) of Part 2 of Division 2
21 of the Insurance Code, and that reveal the deliberative
22 processes, discussions, communications, or any other
23 portion of the negotiations with health plans, or the
24 impressions, opinions, recommendations, meeting
25 minutes, research, work product, theories, or strategy of
26 the board or its staff, or records that provide instructions,
27 advice, or training to employees.

28 (2) Except for the portion of a contract that contains
29 the rates of payment, contracts for health coverage
30 entered into pursuant to Chapter 14 (commencing with
31 Section 10700) of Part 2 of Division 2 of the Insurance
32 Code, on or after January 1, 1993, shall be open to
33 inspection one year after they have been fully executed.

34 (3) Notwithstanding any other provision of law, the
35 entire contract or amendments to a contract shall be open
36 to inspection by the Joint Legislative Audit Committee.
37 The Joint Legislative Audit Committee shall maintain the
38 confidentiality of the contracts and amendments thereto,
39 until the contract or amendments to a contract is open to
40 inspection pursuant to paragraph (2).



1 (x) Financial data contained in applications for
2 registration, or registration renewal, as a service
3 contractor filed with the Director of the Department of
4 Consumer Affairs pursuant to Chapter 20 (commencing
5 with Section 9800) of Division 3 of the Business and
6 Professions Code, for the purpose of establishing the
7 service contractor's net worth, or, financial data
8 regarding the funded accounts held in escrow for service
9 contracts held in force in this state by a service contractor.

10 Nothing in this section prevents any agency from
11 opening its records concerning the administration of the
12 agency to public inspection, unless disclosure is otherwise
13 prohibited by law.

14 Nothing in this section prevents any health facility from
15 disclosing to a certified bargaining agent relevant
16 financing information pursuant to Section 8 of the
17 National Labor Relations Act.

18 SEC. 12. Section 12970 of the Government Code is
19 amended to read:

20 12970. (a) If the commission finds that a respondent
21 has engaged in any unlawful practice under this part, it
22 shall state its findings of fact and determination and shall
23 issue and cause to be served on the parties an order
24 requiring the respondent to cease and desist from the
25 unlawful practice and to take ~~such~~ action, including, but
26 not limited to, any of the following:

27 (1) The hiring, reinstatement or upgrading of
28 employees, with or without backpay.

29 (2) The admission or restoration to membership in any
30 respondent labor organization.

31 (3) The payment of actual damages as may be
32 available in civil actions under this part, except as
33 otherwise provided in this section. Actual damages
34 include, but are not limited to, damages for emotional
35 injuries if the accusation or amended accusation prays for
36 those damages. Actual damages awarded under this
37 section for emotional pain, suffering, inconvenience,
38 mental anguish, loss of enjoyment of life, and other
39 nonpecuniary losses shall not exceed, in combination with
40 the amounts of any administrative fines imposed



1 pursuant to subdivision (c), fifty thousand dollars
2 (\$50,000) per aggrieved person per respondent.

3 (4) Notwithstanding paragraph (3), the payment of
4 actual damages up to one hundred fifty thousand dollars
5 (\$150,000) assessed against a respondent for a violation of
6 Section 51.7 of the Civil Code, as an unlawful practice
7 under this part.

8 (5) Affirmative or prospective relief to prevent the
9 recurrence of the unlawful practice.

10 (6) A report to the commission as to the manner of
11 compliance with the commission's order.

12 (b) An unlawful practice under this part alone is not
13 sufficient to sustain an award of actual damages pursuant
14 to this section. The department is required to prove, by
15 a preponderance of the evidence, that an aggrieved
16 person has sustained actual injury. In determining
17 whether to award damages for emotional injuries, and the
18 amount of any award for these damages, the commission
19 shall consider relevant evidence of the effects of
20 discrimination on the aggrieved person with respect to
21 any or all of the following:

- 22 (1) Physical and mental well-being.
- 23 (2) Personal integrity, dignity, and privacy.
- 24 (3) Ability to work, earn a living, and advance in his or
25 her career.
- 26 (4) Personal and professional reputation.
- 27 (5) Family relationships.
- 28 (6) Access to the job and ability to associate with peers
29 and coworkers.

30 The commission shall also consider the duration of the
31 emotional injury, and whether that injury was caused or
32 exacerbated by an aggrieved person's knowledge of a
33 respondent's failure to respond adequately to, or to
34 correct, the discriminatory practice or by the
35 egregiousness of the discriminatory practice.

36 (c) In addition to the foregoing, in order to vindicate
37 the purposes and policies of this part, the commission may
38 assess against the respondent, if the accusation or
39 amended accusation so prays, an administrative fine per
40 aggrieved person per respondent, the amount of which



1 shall be determined in accordance with the combined
2 amount limitation of paragraph (3) of subdivision (a).

3 (d) In determining whether to assess an
4 administrative fine pursuant to this section, the
5 commission shall find that the respondent has been guilty
6 of oppression, fraud, or malice, expressed or implied, as
7 required by Section 3294 of the Civil Code. In
8 determining the amount of fines, the commission shall
9 consider relevant evidence of, including, but not limited
10 to, the following:

- 11 (1) Willful, intentional, or purposeful conduct.
- 12 (2) Refusal to prevent or eliminate discrimination.
- 13 (3) Conscious disregard for the rights of employees.
- 14 (4) Commission of unlawful conduct.
- 15 (5) Intimidation or harassment.
- 16 (6) Conduct without just cause or excuse.
- 17 (7) Multiple violations of the Fair Employment and
18 Housing Act.

19 The moneys derived from an administrative fine
20 assessed pursuant to this subdivision shall be deposited in
21 the General Fund. No administrative fine shall be
22 assessed against a public entity. The commission shall
23 have no authority to award punitive damages as a remedy
24 for a finding of employment discrimination.

25 (e) In addition to the foregoing, in order to vindicate
26 the purposes and policies of this part, the commission may
27 assess against the respondent if the accusation or
28 amended accusation so prays, a civil penalty of up to
29 twenty-five thousand dollars (\$25,000) to be awarded to
30 a person denied any right provided for by Section 51.7 of
31 the Civil Code, as an unlawful practice prohibited under
32 this part.

33 (f) If the commission finds the respondent has
34 engaged in an unlawful practice under this part, and the
35 respondent is licensed or granted a privilege by an agency
36 of the state to do business, provide a service, or conduct
37 activities, and the unlawful practice is determined to
38 have occurred in connection with the exercise of that
39 license or privilege, the commission shall provide the



1 licensing or privilege granting agency with a copy of its
2 decision or order.

3 (g) If the commission finds that a respondent has not
4 engaged in an unlawful practice under this part, the
5 commission shall state its findings of fact and
6 determination and issue and cause to be served on the
7 parties an order dismissing the accusation as to that
8 respondent.

9 (h) Any findings and determination made or any
10 order issued pursuant to this section shall be written and
11 shall indicate the identity of the members of the
12 commission who participated herein.

13 (i) Any order issued by the commission shall have
14 printed on its face references to the rights of appeal of any
15 party to the proceeding to whose position the order is
16 adverse.

17 (j) If the commission finds that a respondent has
18 engaged in an unlawful practice under this part, and it
19 appears that this practice consisted of acts described in
20 Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal
21 Code, the commission, with the consent of the
22 complainant, shall provide the local district attorney's
23 office with a copy of its decision and order.

24 (k) Notwithstanding Section 12960, if the commission
25 finds that a respondent has engaged in unlawful
26 discrimination in housing under Section 12948, the
27 remedies afforded in Section 12987 or any other provision
28 in this part pertaining to housing discrimination, shall
29 apply.

30 SEC. 13. Section 13960 of the Government Code is
31 amended to read:

32 13960. As used in this article:

33 (a) (1) "Victim" means a resident of the State of
34 California, a member of the military stationed in
35 California, or a family member living with a member of
36 the military stationed in California who sustains injury or
37 death as a direct result of a crime.

38 (2) "Derivative victim" means a resident of California
39 who is one of the following:



1 (A) At the time of the crime was the parent, sibling,
2 spouse, or child of the victim.

3 (B) At the time of the crime was living in the
4 household of the victim.

5 (C) A person who had previously lived in the
6 household of the victim for a period of not less than two
7 years in a relationship substantially similar to a
8 relationship listed in subparagraph (A).

9 (D) Is another family member of the victim, including
10 the victim's fiancé, and witnessed the crime.

11 (b) "Injury" includes physical or emotional injury, or
12 both. However, this article does not apply to emotional
13 injury unless that injury is incurred by a victim who also
14 sustains physical injury or threat of physical injury. For
15 purposes of this article, a victim of a crime committed in
16 violation of Section 261, 262, 270, 270a, 270c, 271, 272, 273a,
17 273b, 273d, 285, 286, 288, 288.1, 288a, or 289 of the Penal
18 Code, who sustains emotional injury is presumed to have
19 sustained physical injury.

20 (c) "Crime" means a crime or public offense that
21 would constitute a misdemeanor or a felony if committed
22 in California by a competent adult that results in injury
23 to a resident of this state, including a crime or public
24 offense, wherever it may take place, when the resident is
25 temporarily absent from the state. No act involving the
26 operation of a motor vehicle, aircraft, or water vehicle
27 that results in injury or death constitutes a crime for the
28 purposes of this article, except that a crime shall include
29 any of the following:

30 (1) Injury or death intentionally inflicted through the
31 use of a motor vehicle, aircraft, or water vehicle.

32 (2) Injury or death caused by a driver in violation of
33 Section 20001 of the Vehicle Code.

34 (3) Injury or death caused by a person who is under
35 the influence of any alcoholic beverage or drug.

36 (4) Injury or death caused by a driver of a motor
37 vehicle in the immediate act of fleeing the scene of a
38 crime in which he or she knowingly and willingly
39 participated.



1 For the purpose of the limitations imposed by this
2 article, a crime shall mean one act or series of related acts
3 arising from the same course of conduct with the same
4 perpetrator or perpetrators.

5 (d) “Pecuniary loss” means the following expenses for
6 which the victim or derivative victim has not been and
7 will not be reimbursed from any other source:

8 (1) The amount of medical or medical-related
9 expenses incurred by the victim, including in-patient
10 psychological or psychiatric expenses, and including, but
11 not limited to, eyeglasses, hearing aids, dentures, or any
12 prosthetic device taken, lost, or destroyed during the
13 commission of the crime, or the use of which became
14 necessary as a direct result of the crime.

15 (2) The amount of out-patient mental health
16 counseling related expenses that became necessary as a
17 direct result of the crime. These counseling services may
18 be provided by a person licensed as a clinical social
19 worker or a person licensed as a marriage, family, and
20 child counselor practicing within the scope of licensure,
21 or within the scope of his or her respective practice acts.

22 (3) The loss of income that the victim or the loss of
23 support that the derivative victim has incurred or will
24 incur as a direct result of an injury or death.

25 (4) Pecuniary loss also includes nonmedical remedial
26 care and treatment rendered in accordance with a
27 religious method of healing recognized by state law.

28 (5) The amount of family psychiatric, psychological, or
29 mental health counseling expenses necessary as a direct
30 result of the crime for the successful treatment of the
31 victim, provided to family members of the victim in the
32 presence of the victim, whether or not the family
33 member relationship existed at the time of the crime.

34 (e) “Board” means the State Board of Control.

35 (f) “Victim centers” means those centers as specified
36 in Section 13835.2 of the Penal Code.

37 (g) “Peer counselor” means a provider of mental
38 health counseling services who has completed a
39 specialized course in rape crisis counseling skills
40 development, participates in continuing education in



1 rape crisis counseling skills development, and provides
2 rape crisis counseling in consultation with a mental health
3 practitioner licensed within the State of California.

4 SEC. 14. Section 19702 of the Government Code is
5 amended to read:

6 19702. (a) A person shall not be discriminated
7 against under this part because of sex, race, religious
8 creed, color, national origin, ancestry, marital status,
9 physical disability, or mental disability. A person shall not
10 be retaliated against because he or she has opposed any
11 practice made an unlawful employment practice, or
12 made a charge, testified, assisted, or participated in any
13 manner in an investigation, proceeding, or hearing under
14 this part. For purposes of this article, “discrimination”
15 includes harassment. This subdivision is declaratory of
16 existing law.

17 (b) As used in this section, “physical disability”
18 includes, but is not limited to, impairment of sight,
19 hearing, or speech, or impairment of physical ability
20 because of amputation or loss of function or coordination,
21 or any other health impairment which requires special
22 education or related services.

23 (c) As used in this section, “mental disability”
24 includes, but is not limited to, any mental or psychological
25 disorder, such as mental retardation, organic brain
26 syndrome, emotional or mental illness, and specific
27 learning disabilities.

28 (d) Notwithstanding subdivisions (b) and (c), if the
29 definition of disability used in the Americans with
30 Disabilities Act of 1990 (Public Law 101-336) would result
31 in broader protection of the civil rights of individuals with
32 a mental disability or physical disability, as defined in
33 subdivision (b) or (c), then that broader protection shall
34 be deemed incorporated by reference into, and shall
35 prevail over conflicting provisions of, the definitions in
36 subdivisions (b) and (c). The definitions of subdivisions
37 (b) and (c) shall not be deemed to refer to or include
38 conditions excluded from the federal definition of
39 “disability” pursuant to Section 511 of the Americans with
40 Disabilities Act of 1990 (42 U.S.C. Sec. 12211).



1 (e) If the board finds that a person has engaged in
2 discrimination under this part, and it appears that this
3 practice consisted of acts described in Section 243.4, 261,
4 262, 286, 288, 288a, or 289 of the Penal Code, the board,
5 with the consent of the complainant, shall provide the
6 local district attorney's office with a copy of its decision
7 and order.

8 (f) If the board finds that discrimination has occurred
9 in violation of this part, the board shall issue and cause to
10 be served on the appointing authority an order requiring
11 the appointing authority to cause the discrimination to
12 cease and desist and to take any action, including, but not
13 limited to, hiring, reinstatement or upgrading of
14 employees, with or without backpay, and compensatory
15 damages, which, in the judgment of the board, will
16 effectuate the purposes of this part. Consistent with this
17 authority, the board may establish rules governing the
18 award of compensatory damages. The order shall include
19 a requirement of reporting the manner of compliance.

20 (g) Any person claiming discrimination within the
21 state civil service may submit a complaint which shall be
22 in writing and set forth the particulars of the alleged
23 discrimination, the name of the appointing authority, the
24 persons alleged to have committed the unlawful
25 discrimination, and any other information that may be
26 required by the board. The complaint shall be filed with
27 the appointing authority or, in accordance with board
28 rules, with the board itself.

29 (h) Complaints shall be filed within one year of the
30 alleged unlawful discrimination or the refusal to act in
31 accordance with this section, except that this period may
32 be extended for not to exceed 90 days following the
33 expiration of that year, if a person allegedly aggrieved by
34 unlawful discrimination first obtained knowledge of the
35 facts of the alleged unlawful discrimination after the
36 expiration of one year from the date of its occurrence.
37 Complaints of discrimination in adverse actions or
38 rejections on probation shall be filed in accordance with
39 Sections 19175 and 19575.



1 (i) When an employee of the appointing authority
2 refuses, or threatens to refuse, to cooperate in the
3 investigation of a complaint of discrimination, the
4 appointing authority may seek assistance from the board.
5 The board may provide for direct investigation or hearing
6 of the complaint, the use of subpoenas, or any other action
7 which will effect the purposes of this section.

8 SEC. 15. Section 273.5 of the Penal Code is amended
9 to read:

10 273.5. (a) Any person who willfully inflicts upon his
11 or her spouse, or any person who willfully inflicts upon
12 any person with whom he or she is cohabiting, or any
13 person who willfully inflicts upon any person who is the
14 mother or father of his or her child, corporal injury
15 resulting in a traumatic condition, is guilty of a felony, and
16 upon conviction thereof shall be punished by
17 imprisonment in the state prison for two, three, or four
18 years, or in a county jail for not more than one year, or by
19 a fine of up to six thousand dollars (\$6,000), or by both.

20 (b) Holding oneself out to be the husband or wife of
21 the person with whom one is cohabiting is not necessary
22 to constitute cohabitation as the term is used in this
23 section.

24 (c) As used in this section, “traumatic condition”
25 means a condition of the body, such as a wound or
26 external or internal injury, whether of a minor or serious
27 nature, caused by a physical force.

28 (d) For the purpose of this section, a person shall be
29 considered the father or mother of another person’s child
30 if the alleged male parent is presumed the natural father
31 under Sections 7611 and 7612 of the Family Code.

32 (e) In any case in which a person is convicted of
33 violating this section and probation is granted, the court
34 shall require participation in a batterer’s treatment
35 program as a condition of probation, as specified in
36 Section 1203.097.

37 (f) If probation is granted, or the execution or
38 imposition of a sentence is suspended, for any person
39 convicted under subdivision (a) who previously has been
40 convicted under subdivision (a) for an offense that



1 occurred within seven years of the offense of the second
2 conviction, it shall be a condition thereof that he or she
3 be imprisoned in a county jail for not less than 15 days and
4 that he or she participate in for no less than one year, and
5 successfully complete, a batterer's treatment program, as
6 designated by the court pursuant to Section 1203.097.
7 However, the court, upon a showing of good cause, may
8 find that the mandatory minimum imprisonment, as
9 required by this subdivision, shall not be imposed and
10 grant probation or the suspension of the execution or
11 imposition of a sentence.

12 (g) If probation is granted, or the execution or
13 imposition of a sentence is suspended, for any person
14 convicted under subdivision (a) who previously has been
15 convicted of two or more violations of subdivision (a) for
16 offenses that occurred within seven years of the most
17 recent conviction, it shall be a condition thereof that he
18 or she be imprisoned in a county jail for not less than 60
19 days and that he or she participate in for no less than one
20 year, and successfully complete, a batterer's treatment
21 program as designated by the court pursuant to Section
22 1203.097. However, the court, upon a showing of good
23 cause, may find that the mandatory minimum
24 imprisonment, as required by this subdivision, shall not be
25 imposed and grant probation or the suspension of the
26 execution or imposition of a sentence.

27 (h) If probation is granted upon conviction of a
28 violation of subdivision (a), the conditions of probation
29 may include, in lieu of a fine, one or both of the following
30 requirements:

31 (1) That the defendant make payments to a battered
32 women's shelter, up to a maximum of five thousand
33 dollars (\$5,000), pursuant to Section 1203.097.

34 (2) That the defendant reimburse the victim for
35 reasonable costs of counseling and other reasonable
36 expenses that the court finds are the direct result of the
37 defendant's offense.

38 For any order to pay a fine, make payments to a
39 battered women's shelter, or pay restitution as a
40 condition of probation under this subdivision, the court



1 shall make a determination of the defendant's ability to
2 pay. In no event shall any order to make payments to a
3 battered women's shelter be made if it would impair the
4 ability of the defendant to pay direct restitution to the
5 victim or court-ordered child support. Where the injury
6 to a married person is caused in whole or in part by the
7 criminal acts of his or her spouse in violation of this
8 section, the community property may not be used to
9 discharge the liability of the offending spouse for
10 restitution to the injured spouse, required by Section
11 1203.04, or to a shelter for costs with regard to the injured
12 spouse and dependents, required by this section, until all
13 separate property of the offending spouse is exhausted.

14 SEC. 16. Section 679.04 is added to the Penal Code, to
15 read:

16 679.04. A victim of sexual assault, as defined in
17 subdivisions (a) and (b) of Section 11165.1, has the right
18 to have an advocate present at any evidentiary or physical
19 examination or interview by law enforcement
20 authorities.

21 SEC. 17. Section 1732 of the Welfare and Institutions
22 Code is amended to read:

23 1732. No person convicted of violating Section 261,
24 262, or 264.1, subdivision (b) of Section 288, Section 289,
25 or of sodomy or oral copulation by force, violence, duress,
26 menace or threat of great bodily harm as provided in
27 Section 286 or 288a of the Penal Code committed when
28 that person was 18 years of age who has previously been
29 convicted of any such felony shall be committed to the
30 Youth Authority. This section does not prohibit the
31 adjournment of criminal proceedings pursuant to
32 Division 3 (commencing with Section 3000) or Division
33 6 (commencing with Section 6000) of the Welfare and
34 Institutions Code.

35 SEC. 18. Section 1767.1 of the Welfare and Institutions
36 Code is amended to read:

37 1767.1. At least 30 days before the Youthful Offender
38 Parole Board meets to review or consider the parole of
39 any person who has been committed to the control of the
40 Department of the Youth Authority for the commission



1 of any offense described in subdivision (b), paragraph (2)
2 of subdivision (d), or subdivision (e) of Section 707, or for
3 the commission of an offense in violation of paragraph (2)
4 of subdivision (a) of Section 262 or paragraph (3) of
5 subdivision (a) of Section 261 of the Penal Code, the
6 board shall send written notice of the hearing to each of
7 the following persons: the judge of the court that
8 committed the person to the authority, the attorney for
9 the person, the district attorney of the county from which
10 the person was committed, and the law enforcement
11 agency that investigated the case. The Youthful Offender
12 Parole Board shall also send a progress report regarding
13 the ward, prepared by the Department of the Youth
14 Authority, to the judge of the court that committed the
15 person at the same time it sends the written notice to the
16 judge.

17 Each of the persons so notified shall have the right to
18 submit a written statement to the board at least 10 days
19 prior to the scheduled hearing for the board's
20 consideration at the hearing. Nothing in this subdivision
21 shall be construed to permit any person so notified to
22 attend the hearing. With respect to the parole of any
23 person over the age of 18 years, the presiding officer shall
24 state findings and supporting reasons for the decision of
25 the board at the hearing. The findings and reasons shall
26 be reduced to writing, and shall be made available for
27 inspection by members of the public no later than 30 days
28 from the date of the hearing.

29 SEC. 19. Section 1781 of the Welfare and Institutions
30 Code is amended to read:

31 1781. Upon the filing of a petition under this article,
32 the court shall notify the person whose liberty is involved,
33 and if he or she is a minor, his or her parent or guardian
34 if practicable, of the application and shall afford him or
35 her an opportunity to appear in court with the aid of
36 counsel and of process to compel attendance of witnesses
37 and production of evidence. When he or she is unable to
38 provide his *or her* own counsel, the court shall appoint
39 counsel to represent him or her.

1 In the case of any person who is the subject of such a
2 petition and who is under the control of the Youth
3 Authority for the commission of any offense of rape in
4 violation of paragraph (1) or (2) of subdivision (a) of
5 Section 262 or subdivision (2) or subdivision (3) of
6 Section 261 of the Penal Code, or murder, the Youthful
7 Offender Parole Board shall send written notice of the
8 petition and of any hearing set for the petition to each of
9 the following persons: the attorney for the person who is
10 the subject of the petition, the district attorney of the
11 county from which the person was committed, and the
12 law enforcement agency that investigated the case. The
13 board shall also send written notice to the victim of the
14 rape or the next of kin of the person murdered if he or she
15 requests notice from the board and keeps it apprised of
16 his or her current mailing address. Notice shall be sent at
17 least 30 days before the hearing.

18 SEC. 20. Section 6500 of the Welfare and Institutions
19 Code is amended to read:

20 6500. On and after July 1, 1971, no mentally retarded
21 person may be committed to the State Department of
22 Developmental Services pursuant to this article, unless
23 he or she is a danger to himself or herself or others. For
24 the purposes of this article, dangerousness to self or others
25 shall be considered to include, but not be limited to, a
26 finding of incompetence to stand trial pursuant to the
27 provisions of Chapter 6 (commencing with Section 1367)
28 of Title 10 of Part 2 of the Penal Code when the defendant
29 has been charged with murder, mayhem, aggravated
30 mayhem, a violation of Section 207, 209, or 209.5 of the
31 Penal Code in which the victim suffers intentionally
32 inflicted great bodily injury, robbery perpetrated by
33 torture or by a person armed with a dangerous or deadly
34 weapon or in which the victim suffers great bodily injury,
35 carjacking perpetrated by torture or by a person armed
36 with a dangerous or deadly weapon or in which the victim
37 suffers great bodily injury, a violation of subdivision (b)
38 of Section 451 of the Penal Code, a violation of paragraph
39 (1) or (2) of subdivision (a) of Section 262 or paragraph
40 (2) or (3) of subdivision (a) of Section 261 of the Penal



1 Code, a violation of Section 459 of the Penal Code in the
2 first degree, assault with intent to commit murder, a
3 violation of Section 220 of the Penal Code in which the
4 victim suffers great bodily injury, a violation of Section
5 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code,
6 or if the defendant has been charged with a felony
7 involving death, great bodily injury, or an act that poses
8 a serious threat of bodily harm to another person.

9 Any order of commitment made pursuant to this article
10 shall expire automatically one year after the order of
11 commitment is made. This section shall not be construed
12 to prohibit any party enumerated in Section 6502 from
13 filing subsequent petitions for additional periods of
14 commitment. In the event subsequent petitions are filed,
15 the procedures followed shall be the same as with an
16 initial petition for commitment.

17 In any proceedings conducted under the authority of
18 this article the alleged mentally retarded person shall be
19 informed of his or her right to counsel by the court; and
20 if the person does not have an attorney for the
21 proceedings the court shall immediately appoint the
22 public defender or other attorney to represent him or
23 her. The person shall pay the cost for ~~such~~ *that* legal
24 service if he or she is able to do so. At any judicial
25 proceeding under the provisions of this article,
26 allegations that a person is mentally retarded and a
27 danger to himself or herself or to others shall be presented
28 by the district attorney for the county unless the board of
29 supervisors, by ordinance or resolution, delegates this
30 authority to the county counsel.

31 SEC. 21. Section 8103 of the Welfare and Institutions
32 Code is amended to read:

33 8103. (a) (1) No person who after October 1, 1955,
34 has been adjudicated by a court of any state to be a danger
35 to others as a result of *a* mental disorder or mental illness,
36 or who has been adjudicated to be a mentally disordered
37 sex offender, shall purchase or receive, or attempt to
38 purchase or receive, or have in his or her possession,
39 custody, or control any firearm or any other deadly
40 weapon unless there has been issued to the person a



1 certificate by the court of adjudication upon release from
2 treatment or at a later date stating that the person may
3 possess a firearm or any other deadly weapon without
4 endangering others, and the person has not, subsequent
5 to the issuance of the certificate, again been adjudicated
6 by a court to be a danger to others as a result of a mental
7 disorder or mental illness.

8 (2) The court shall immediately notify the
9 Department of Justice of the court order finding the
10 individual to be a person described in paragraph (1). The
11 court shall also notify the Department of Justice of any
12 certificate issued as described in paragraph (1).

13 (b) (1) No person who has been found, pursuant to
14 Section 1026 of the Penal Code or the law of any other
15 state or the United States, not guilty by reason of insanity
16 of murder, mayhem, a violation of Section 207, 209, or
17 209.5 of the Penal Code in which the victim suffers
18 intentionally inflicted great bodily injury, carjacking or
19 robbery in which the victim suffers great bodily injury, a
20 violation of Section 451 or 452 of the Penal Code involving
21 a trailer coach, as defined in Section 635 of the Vehicle
22 Code, or any dwelling house, a violation of paragraph (1)
23 or (2) of subdivision (a) of Section 262 or paragraph (2)
24 or (3) of subdivision (a) of Section 261 of the Penal Code,
25 a violation of Section 459 of the Penal Code in the first
26 degree, assault with intent to commit murder, a violation
27 of Section 220 of the Penal Code in which the victim
28 suffers great bodily injury, a violation of Section 12303.1,
29 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code,
30 or of a felony involving death, great bodily injury, or an
31 act which poses a serious threat of bodily harm to another
32 person, or a violation of the law of any other state or the
33 United States that includes all the elements of any of the
34 above felonies as defined under California law, shall
35 purchase or receive, or attempt to purchase or receive, or
36 have in his or her possession or under his or her custody
37 or control any firearm or any other deadly weapon.

38 (2) The court shall immediately notify the
39 Department of Justice of the court order finding the
40 person to be a person described in paragraph (1).



1 (c) (1) No person who has been found, pursuant to
2 Section 1026 of the Penal Code or the law of any other
3 state or the United States, not guilty by reason of insanity
4 of any crime other than those described in subdivision (b)
5 shall purchase or receive, or attempt to purchase or
6 receive, or shall have in his or her possession, custody, or
7 control any firearm or any other deadly weapon unless
8 the court of commitment has found the person to have
9 recovered sanity, pursuant to Section 1026.2 of the Penal
10 Code or the law of any other state or the United States.

11 (2) The court shall immediately notify the
12 Department of Justice of the court order finding the
13 person to be a person described in paragraph (1). The
14 court shall also notify the Department of Justice when it
15 finds that the person has recovered his or her sanity.

16 (d) (1) No person found by a court to be mentally
17 incompetent to stand trial, pursuant to Section 1370 or
18 1370.1 of the Penal Code or the law of any other state or
19 the United States, shall purchase or receive, or attempt to
20 purchase or receive, or shall have in his or her possession,
21 custody, or control any firearm or any other deadly
22 weapon, unless there has been a finding with respect to
23 the person of restoration to competence to stand trial by
24 the committing court, pursuant to Section 1372 of the
25 Penal Code or the law of any other state or the United
26 States.

27 (2) The court shall immediately notify the
28 Department of Justice of the court order finding the
29 person to be mentally incompetent as described in
30 paragraph (1). The court shall also notify the Department
31 of Justice when it finds that the person has recovered his
32 or her competence.

33 (e) (1) No person who has been placed under
34 conservatorship by a court, pursuant to Section 5350 or
35 the law of any other state or the United States, because
36 the person is gravely disabled as a result of a mental
37 disorder or impairment by chronic alcoholism shall
38 purchase or receive, or attempt to purchase or receive, or
39 shall have in his or her possession, custody, or control any
40 firearm or any other deadly weapon while under the



1 conservatorship if, at the time the conservatorship was
2 ordered or thereafter, the court which imposed the
3 conservatorship found that possession of a firearm or any
4 other deadly weapon by the person would present a
5 danger to the safety of the person or to others. Upon
6 placing any person under conservatorship, and
7 prohibiting firearm or any other deadly weapon
8 possession by the person, the court shall notify the person
9 of this prohibition.

10 (2) The court shall immediately notify the
11 Department of Justice of the court order placing the
12 person under conservatorship and prohibiting firearm or
13 any other deadly weapon possession by the person as
14 described in paragraph (1). The notice shall include the
15 date the conservatorship was imposed and the date the
16 conservatorship is to be terminated. If the
17 conservatorship is subsequently terminated before the
18 date listed in the notice to the Department of Justice or
19 the court subsequently finds that possession of a firearm
20 or any other deadly weapon by the person would no
21 longer present a danger to the safety of the person or
22 others, the court shall immediately notify the
23 Department of Justice.

24 (3) All information provided to the Department of
25 Justice pursuant to paragraph (2) shall be kept
26 confidential, separate, and apart from all other records
27 maintained by the department, and shall be used only to
28 determine eligibility to purchase or possess firearms or
29 other deadly weapons. Any person who knowingly
30 furnishes that information for any other purpose is guilty
31 of a misdemeanor. All the information concerning any
32 person shall be destroyed upon receipt by the
33 Department of Justice of notice of the termination of
34 conservatorship as to that person pursuant to paragraph
35 (2).

36 (f) (1) No person who has been (A) taken into
37 custody as provided in Section 5150 because that person
38 is a danger to himself, herself, or to others, (B) assessed
39 within the meaning of Section 5151, and (C) admitted to
40 a designated facility within the meaning of Sections 5151



1 and 5152 because that person is a danger to himself,
2 herself, or others, shall own, possess, control, receive, or
3 purchase, or attempt to own, possess, control, receive, or
4 purchase any firearm for a period of five years after the
5 person is released from the facility. A person described in
6 the preceding sentence, however, may own, possess,
7 control, receive, or purchase, or attempt to own, possess,
8 control, receive, or purchase any firearm if the superior
9 court has, pursuant to paragraph (4), upon petition of the
10 person, found, by a preponderance of the evidence, that
11 the person is likely to use firearms in a safe and lawful
12 manner.

13 (2) For each person subject to this subdivision, the
14 facility shall immediately, on the date of admission,
15 submit a report to the Department of Justice, on a form
16 prescribed by the department, containing information
17 that includes, but is not limited to, the identity of the
18 person and the legal grounds upon which the person was
19 admitted to the facility.

20 Any report prescribed by this subdivision shall be
21 confidential, except for purposes of the court proceedings
22 described in this subdivision and for determining the
23 eligibility of the person to own, possess, control, receive,
24 or purchase a firearm.

25 (3) Prior to, or concurrent with, the discharge, the
26 facility shall inform a person subject to this subdivision
27 that he or she is prohibited from owning, possessing,
28 controlling, receiving, or purchasing any firearm for a
29 period of five years. Simultaneously, the facility shall
30 inform the person that he or she may petition a court, as
31 provided in this subdivision, for an order permitting the
32 person to own, possess, control, receive, or purchase a
33 firearm.

34 (4) Any person who is subject to paragraph (1) may
35 petition the superior court of his or her county of
36 residence for an order that he or she may own, possess,
37 control, receive, or purchase firearms. At the time the
38 petition is filed, the clerk of the court shall set a hearing
39 date and notify the person, the Department of Justice,
40 and the district attorney. The People of the State of



1 California shall be the respondent in the proceeding and
2 shall be represented by the district attorney. Upon
3 motion of the district attorney, or on its own motion, the
4 superior court may transfer the petition to the county in
5 which the person resided at the time of his or her
6 detention, the county in which the person was detained,
7 or the county in which the person was evaluated or
8 treated. Within seven days after receiving notice of the
9 petition, the Department of Justice shall file copies of the
10 reports described in this section with the superior court.
11 The reports shall be disclosed upon request to the person
12 and to the district attorney. The district attorney shall be
13 entitled to a continuance of the hearing to a date of not
14 less than 14 days after the district attorney was notified of
15 the hearing date by the clerk of the court. The district
16 attorney may notify the county mental health director of
17 the petition who shall provide information about the
18 detention of the person that may be relevant to the court
19 and shall file that information with the superior court.
20 That information shall be disclosed to the person and to
21 the district attorney. The court, upon motion of the
22 person subject to paragraph (1) establishing that
23 confidential information is likely to be discussed during
24 the hearing that would cause harm to the person, shall
25 conduct the hearing in camera with only the relevant
26 parties present, unless the court finds that the public
27 interest would be better served by conducting the
28 hearing in public. Notwithstanding any other law,
29 declarations, police reports, including criminal history
30 information, and any other material and relevant
31 evidence that is not excluded under Section 352 of the
32 Evidence Code, shall be admissible at the hearing under
33 this section. If the court finds by a preponderance of the
34 evidence that the person would be likely to use firearms
35 in a safe and lawful manner, the court may order that the
36 person may own, control, receive, possess, or purchase
37 firearms. A copy of the order shall be submitted to the
38 Department of Justice. Upon receipt of the order, the
39 Department of Justice shall delete any reference to the



1 prohibition against firearms from the person's state
2 summary criminal history information.

3 (5) Nothing in this subdivision shall prohibit the use of
4 reports filed pursuant to this section to determine the
5 eligibility of persons to own, possess, control, receive, or
6 purchase a firearm if the person is the subject of a
7 criminal investigation, a part of which involves the
8 ownership, possession, control, receipt, or purchase of a
9 firearm.

10 (g) (1) No person who has been certified for intensive
11 treatment under Section 5250, 5260, or 5270.15 shall own,
12 possess, control, receive, or purchase, or attempt to own,
13 possess, control, receive, or purchase any firearm for a
14 period of five years.

15 Any person who meets the criteria contained in
16 subdivision (e) or (f) who is released from intensive
17 treatment shall nevertheless, if applicable, remain
18 subject to the prohibition contained in subdivision (e) or
19 (f).

20 (2) For each person certified for intensive treatment
21 under paragraph (1), the facility shall immediately
22 submit a report to the Department of Justice, on a form
23 prescribed by the department, containing information
24 regarding the person, including, but not limited to, the
25 legal identity of the person and the legal grounds upon
26 which the person was certified. Any report submitted
27 pursuant to this paragraph shall only be used for the
28 purposes specified in paragraph (2) of subdivision (f).

29 (3) Prior to, or concurrent with, the discharge of each
30 person certified for intensive treatment under paragraph
31 (1), the facility shall inform the person of that
32 information specified in paragraph (3) of subdivision (f).

33 (4) Any person who is subject to the prohibition
34 contained in paragraph (1) may fully invoke paragraph
35 (4) of subdivision (f).

36 (h) For all persons identified in subdivisions (f) and
37 (g), facilities shall report to the Department of Justice as
38 specified in those subdivisions, except facilities shall not
39 report persons under subdivision (g) if the same persons
40 previously have been reported under subdivision (f).



1 Additionally, all facilities shall report to the
2 Department of Justice upon the discharge of persons
3 from whom reports have been submitted pursuant to
4 subdivision (f) or (g). However, a report shall not be filed
5 for persons who are discharged within 31 days after the
6 date of admission.

7 (i) Every person who owns or possesses or has under
8 his or her custody or control, or purchases or receives, or
9 attempts to purchase or receive, any firearm or any other
10 deadly weapon in violation of this section shall be
11 punished by imprisonment in the state prison or in a
12 county jail for not more than one year.

13 (j) “Deadly weapon,” as used in this section, has the
14 meaning prescribed by Section 8100.

15 SEC. 22. Section 15610.63 of the Welfare and
16 Institutions Code is amended to read:

17 15610.63. “Physical abuse” means any of the
18 following:

19 (a) Assault, as defined in Section 240 of the Penal
20 Code.

21 (b) Battery, as defined in Section 242 of the Penal
22 Code.

23 (c) Assault with a deadly weapon or force likely to
24 produce great bodily injury, as defined in Section 245 of
25 the Penal Code.

26 (d) Unreasonable physical constraint, or prolonged or
27 continual deprivation of food or water.

28 (e) Sexual assault, that means any of the following:

29 (1) Sexual battery, as defined in Section 243.4 of the
30 Penal Code.

31 (2) Rape, as defined in Section 261 of the Penal Code.

32 (3) Rape in concert, as described in Section 264.1 of the
33 Penal Code.

34 (4) Spousal rape, as defined in Section 262 of the Penal
35 Code.

36 (5) Incest, as defined in Section 285 of the Penal Code.

37 (6) Sodomy, as defined in Section 286 of the Penal
38 Code.

39 (7) Oral copulation, as defined *in* Section 288a of the
40 Penal Code.



1 (8) Penetration of a genital or anal opening by a
2 foreign object, as defined in Section 289 of the Penal
3 Code.

4 (f) Use of a physical or chemical restraint or
5 psychotropic medication under any of the following
6 conditions:

7 (1) For punishment.

8 (2) For a period beyond that for which the medication
9 was ordered pursuant to the instructions of a physician
10 and surgeon licensed in the State of California, who is
11 providing medical care to the elder or dependent adult
12 at the time the instructions are given.

13 (3) For any purpose not authorized by the physician
14 and surgeon.

15 SEC. 23. No reimbursement is required by this act
16 pursuant to Section 6 of Article XIII B of the California
17 Constitution because the only costs that may be incurred
18 by a local agency or school district will be incurred
19 because this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition
23 of a crime within the meaning of Section 6 of Article
24 XIII B of the California Constitution.

25 Notwithstanding Section 17580 of the Government
26 Code, unless otherwise specified, the provisions of this act
27 shall become operative on the same date that the act
28 takes effect pursuant to the California Constitution.

