SELECTED CALIFORNIA PENAL CODE SECTIONS

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Penal Code

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SYNOPSIS

CALIFORNIA PENAL CODE

PART 1

CRIMES AND PUNISHMENTS

TITLE 1

§ 26. Persons Capable of Committing Crimes; Exceptions.

All persons are capable of committing crimes except those belonging to the following classes:

One—Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

Two—Persons who are mentally incapacitated.

Three—Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.

Four—Persons who committed the act charged without being conscious thereof.

Five—Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

Six—Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

Leg.H.

Enacted 1872. Amended Code Amdts 1873–74 ch 614 § 2; Stats 1976 ch 1181 § 1; Stats 1981 ch 404 § 3; Stats 2007 ch 31 § 3 (AB 1640), effective January 1, 2008.

TITLE 7

Crimes Against Public Justice

CHAPTER 8

CONSPIRACY

§ 182.5. Participation in Criminal Street Gang.

Notwithstanding subdivisions (a) or (b) of Section 182, any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony and may be punished as specified in subdivision (a) of Section 182.

Leg.H.

[Adopted by Initiative (Prop. 21) at the March 7, 2000, Primary Election, operative March 8, 2000.]

CHAPTER 11

STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

§ 186.22. [Effective until January 1, 2023; Repealed effective January 1, 2023]. Street Gang.

(a) A person who actively participates in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b)

(1) Except as provided in paragraphs (4) and (5), a person who is convicted of a felony committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the person has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall select the sentence enhancement that, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of the sentencing in accordance with the provisions of subdivision (d) of Section 1170.1.

(4) A person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), a person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) A person who is convicted of a public offense, punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that a person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until the person has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e)

(1) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of, two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter, and the last of those offenses occurred within three years of the prior offense and within three years of the date the current offense is alleged to have been committed, the offenses were

committed on separate occasions or by two or more members, the offenses commonly benefited a criminal street gang, and the common benefit of the offense is more than reputational:

(A) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(B) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8.

(C) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8.

(D) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture a controlled substance as defined in Section 11007 of the Health and Safety Code.

(E) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(F) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034 until January 1, 2012, and, on or after that date, subdivisions (a) and (b) of Section 26100.

(G) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(H) The intimidation of witnesses and victims, as defined in Section 136.1.

(I) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(J) Grand theft of any firearm, vehicle, trailer, or vessel.

(K) Burglary, as defined in Section 459.

(L) Rape, as defined in Section 261.

(M) Money laundering, as defined in Section 186.10.

(N) Kidnapping, as defined in Section 207.

(O) Mayhem, as defined in Section 203.

(P) Aggravated mayhem, as defined in Section 205.

(Q) Torture, as defined in Section 206.

(R) Felony extortion, as defined in Sections 518 and 520.

(S) Carjacking, as defined in Section 215.

(T) The sale, delivery, or transfer of a firearm, as defined in Section 12072 until January 1, 2012, and, on or after that date, Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(U) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101 until January 1, 2012, and, on or after that date, Section 29610.

(V) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(W) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(X) Prohibited possession of a firearm in violation of Section 12021 until January 1, 2012, and on or after that date, Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(Y) Carrying a concealed firearm in violation of Section 12025 until January 1, 2012, and, on or after that date, Section 25400.

(Z) Carrying a loaded firearm in violation of Section 12031 until January 1, 2012, and, on or after that date, Section 25850.

(2) The currently charged offense shall not be used to establish the pattern of criminal gang activity.

(f) As used in this chapter, "criminal street gang" means an ongoing, organized association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (e), having a common name or common identifying sign or symbol, and whose members collectively engage in, or have engaged in, a pattern of criminal gang activity.

(g) As used in this chapter, to benefit, promote, further, or assist means to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(i) Notwithstanding any other law, for each person committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, pursuant to former Section 912.5 of the Welfare and Institutions Code.

(j) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of their time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(k) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

Leg.H.

Added Stats 1989 ch 930 § 5.1, operative January 1, 1993. Amended Stats 1991 ch 201 § 1, ch 661 § 2, operative January 1, 1993; Stats 1993 ch 601 § 1 (SB 724), ch 610 § 3 (AB 6), effective September 30, 1993, ch 611 § 3 (SB 60), effective September 30, 1993, ch 1125 § 3 (AB 1630), effective October 10, 1993; Stats 1994 ch 47 § 1 (SB 480), effective April 19, 1994, operative until January 1, 1997, ch 451 § 1 (AB 2470), operative until January 1, 1997; Stats 1995 ch 377 § 2 (SB 1095), operative until January 1, 1997; Stats 1996 ch 630 § 1 (SB 1701) operative until January 1, 1998, ch 873 § 1 (SB 318), ch 982 § 1 (AB 2035); Stats 1997 ch 500 § 2 (SB 940); Amendment adopted by voters, Prop 21 § 4, effective March 8, 2000; Amended Stats 2001 ch 854 § 22 (SB 205); Stats 2005 ch 482 § 1 (SB 444), effective January 1, 2006; Stats 2006 ch 596 § 1 (SB 1222), effective January 1, 2007; Stats 2009 ch 171 § 1 (SB 150), effective January 1, 2010; Stats 2010 ch 256 § 1 (AB 2263), effective January 1, 2011, repealed January 1, 2012; Stats 2011 ch 15 § 275 (AB 109), effective April 4, 2011, operative October 1, 2011, repealed January 1, 2012, ch 39 § 6 (AB 117), effective June 30, 2011, operative October 1, 2011, repealed January 1, 2012, ch 361 § 1 (SB 576), effective September 29, 2011, repealed January 1, 2014; Stats 2013 ch 508 § 1 (SB 463), effective January 1, 2014,

repealed January 1, 2017. Stats 2016 ch 887 § 1 (SB 1016), effective January 1, 2017, repealed January 1, 2022; Stats 2017 ch 561 § 178 (AB 1516), effective January 1, 2018, repealed January 1, 2022; Stats 2021 ch 699 § 3 (AB 333), effective January 1, 2022, repealed January 1, 2023.

§ 186.26. Penalty for Soliciting or Recruiting Participation in Criminal Street Gang; Threats of Physical Violence; Additional Penalty for Soliciting Minor.

(a) Any person who solicits or recruits another to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, with the intent that the person solicited or recruited participate in a pattern of criminal street gang activity, as defined in subdivision (e) of Section 186.22, or with the intent that the person solicited or recruited promote, further, or assist in any felonious conduct by members of the criminal street gang, shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(b) Any person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, or to prevent the person from leaving a criminal street gang, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor, an additional term of three years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

(e) Nothing in this section shall be construed to limit prosecution under any other provision of law.

Leg.H.

Added by initiative measure effective March 8, 2000 (Prop 21 § 6). Amended Stats 2001 ch 854 § 23 (SB 205); Stats 2011 ch 15 § 277 (AB 109), effective April 4, 2011, operative date contingent; Stats 2011 ch 15 § 277 (AB 109), effective April 4, 2011, operative October 1, 2011, ch 39 § 8 (AB 117), effective June 30, 2011.

§ 186.30. Duty to Register with Police Chief or Sheriff.

(a) Any person described in subdivision (b) shall register with the chief of police of the city in which he or she resides, or the sheriff of the county if he or she resides in an unincorporated area, within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever occurs first.

(b) Subdivision (a) shall apply to any person convicted in a criminal court or who has had a petition sustained in a juvenile court in this state for any of the following offenses:

(1) Subdivision (a) of Section 186.22.

(2) Any crime where the enhancement specified in subdivision (b) of Section 186.22 is found to be true.

(3) Any crime that the court finds is gang related at the time of sentencing or disposition.

Leg.H.

[Adopted by Initiative (Prop. 21) at the March 7, 2000, Primary Election, operative March 8, 2000.]

§ 186.31. Informing of Duty to Register; Notice; Verification.

At the time of sentencing in adult court, or at the time of the dispositional hearing in the juvenile court, the court shall inform any person subject to Section 186.30 of his or her duty to register pursuant to that section. This advisement shall be noted in the court minute order. The court clerk shall send a copy of the minute order to the law enforcement agency with jurisdiction for the last known address of the person subject to registration under Section 186.30. The parole officer or the probation officer assigned to that person shall verify that he or she has complied with the registration requirements of Section 186.30.

Leg.H.

[Adopted by Initiative (Prop. 21) at the March 7, 2000, Primary Election, operative March 8, 2000.]

§ 186.32. Registration Requirements.

(a) The registration required by Section 186.30 shall consist of the following:

(1) Juvenile registration shall include the following:

(A) The juvenile shall appear at the law enforcement agency with a parent or guardian.

(B) The law enforcement agency shall serve the juvenile and the parent with a California Street Terrorism Enforcement and Prevention Act notification which shall include, where applicable, that the juvenile belongs to a gang whose members engage in or have engaged in a pattern of criminal gang activity as described in subdivision (e) of Section 186.22.

(C) A written statement signed by the juvenile, giving any information that may be required by the law enforcement agency, shall be submitted to the law enforcement agency.

(D) The fingerprints and current photograph of the juvenile shall be submitted to the law enforcement agency.

(2) Adult registration shall include the following:

(A) The adult shall appear at the law enforcement agency.

(B) The law enforcement agency shall serve the adult with a California Street Terrorism Enforcement and Prevention Act notification which shall include, where applicable, that the adult belongs to a gang whose members engage in or have engaged in a pattern of criminal gang activity as described in subdivision (e) of Section 186.22.

(C) A written statement, signed by the adult, giving any information that may be required by the law enforcement agency, shall be submitted to the law enforcement agency.

(D) The fingerprints and current photograph of the adult shall be submitted to the law enforcement agency.

(b) Within 10 days of changing his or her residence address, any person subject to Section 186.30 shall inform, in writing, the law enforcement agency with whom he or she last registered of his or her new address. If his or her new residence address is located within the jurisdiction of a law enforcement agency other than the

agency where he or she last registered, he or she shall register with the new law enforcement agency, in writing, within 10 days of the change of residence.

(c) All registration requirements set forth in this article shall terminate five years after the last imposition of a registration requirement pursuant to Section 186.30.

(d) The statements, photographs and fingerprints required under this section shall not be open to inspection by any person other than a regularly employed peace or other law enforcement officer.

(e) Nothing in this section or Section 186.30 or 186.31 shall preclude a court in its discretion from imposing the registration requirements as set forth in those sections in a gang-related crime.

Leg.H.

[Adopted by Initiative (Prop. 21) at the March 7, 2000, Primary Election, operative March 8, 2000.]

§ 186.33. [Repealed effective January 1, 2022]. Violation of Registration Provision as Misdemeanor; Sentence Enhancement on Subsequent Conviction.

(a) Any person required to register pursuant to Section 186.30 who knowingly violates any of its provisions is guilty of a misdemeanor.

(b)

(1) Any person who knowingly fails to register pursuant to Section 186.30 and is subsequently convicted of, or any person for whom a petition is subsequently sustained for a violation of, any of the offenses specified in Section 186.30, shall be punished by an additional term of imprisonment in the state prison for 16 months, or two or three years. The court shall select the sentence enhancement which, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of sentencing in accordance with the provisions of subdivision (d) of Section 1170.1.

(2) The existence of any fact bringing a person under this subdivision shall be alleged in the information, indictment, or petition, and be either admitted by the defendant or minor in open court, or found to be true or not true by the trier of fact.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

Leg.H.

Added by initiative measure effective March 8, 2000 (Prop 21 § 10). Amended Stats 2009 ch 171 § 3 (SB 150), effective January 1, 2010, repealed January 1, 2011. Stats 2010 ch 256 § 3 (AB 2263), effective January 1, 2011, repealed January 1, 2012; Stats 2011 ch 15 § 279 (AB 109), effective April 4, 2011, operative October 1, 2011, repealed January 1, 2012, ch 39 § 9 (AB 117), effective June 30, 2011, operative October 1, 2011, repealed January 1, 2012, ch 361 § 3 (SB 576), effective September 29, 2011, repealed January 1, 2014; Stats 2013 ch 508 § 3 (SB 463), effective January 1, 2014, repealed January 1, 2017. Stats 2016 ch 887 § 3 (SB 1016), effective January 1, 2017, repealed January 1, 2022.

§ 186.34. "Shared Gang Database"; Written Notice Required Prior to Inclusion in Database.

(a) For purposes of this section and Sections 186.35 and 186.36, the following definitions apply:

(1) "Criminal street gang" means an ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of crimes enumerated in paragraphs (1) to (25), inclusive, and paragraphs (31) to (33), inclusive, of subdivision (e) of Section 186.22 who have a common identifying sign, symbol, or name, and whose members individually or collectively engage in or have engaged in a pattern of definable criminal activity.

(2) "Gang database" means any database accessed by a law enforcement agency that designates a person as a gang member or associate, or includes or points to information, including, but not limited to, fact-based or uncorroborated information, that reflects a designation of that person as a gang member or associate.

(3) "Law enforcement agency" means a governmental agency or a subunit of a governmental agency, and its authorized support staff and contractors, whose primary function is detection, investigation, or apprehension of criminal offenders, or whose primary duties include detention, pretrial release, posttrial release, correctional supervision, or the collection, storage, or dissemination of criminal history record information.

(4) "Shared gang database" means a gang database that is accessed by an agency or person outside of the agency that created the records that populate the database.

(b) Notwithstanding subdivision (a), the following are not subject to this section, or Sections 186.35 and 186.36:

(1) Databases that designate persons as gang members or associates using only criminal offender record information, as defined in Section 13102, or information collected pursuant to Section 186.30.

(2) Databases accessed solely by jail or custodial facility staff for classification or operational decisions in the administration of the facility.

(c)

(1) To the extent a local law enforcement agency elects to utilize a shared gang database prior to a local law enforcement agency designating a person as a suspected gang member, associate, or affiliate in a shared gang database, or submitting a document to the Attorney General's office for the purpose of designating a person in a shared gang database, or otherwise identifying the person in a shared gang database, the local law enforcement agency shall provide written notice to the person, and shall, if the person is under 18 years of age, provide written notice to the person and the person's parent or guardian, of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of the minor.

(2) The notice described in paragraph (1) shall describe the process for the person, or, if the person is under 18 years of age, for the person's parent or guardian, or an attorney working on behalf of the person, to contest the designation of the person in the database. The notice shall also inform the person of the reason for the person's designation in the database.

(d)

(1)

(A) A person, or, if the person is under 18 years of age, the person's parent or guardian, or an attorney working on behalf of the person, may request information of any law enforcement agency as to whether the person is designated as a suspected gang member, associate, or affiliate in a shared gang database accessible by that law enforcement agency and the name of the law enforcement agency that made the designation. A request pursuant to this paragraph shall be in writing.

(B) If a person about whom information is requested pursuant to subparagraph (A) is designated as a suspected gang member, associate, or affiliate in a shared gang database by that law enforcement agency, the person making the request may also request information as to the basis for the designation for the purpose of contesting the designation as described in subdivision (e).

(2) The law enforcement agency shall provide information requested under paragraph (1), unless doing so would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age.

(3) The law enforcement agency shall respond to a valid request pursuant to paragraph (1) in writing to the person making the request within 30 calendar days of receipt of the request.

(e) Subsequent to the notice described in subdivision (c) or the law enforcement agency's response to an information request described in subdivision (d), the person designated or to be designated as a suspected gang member, associate, or affiliate, or the person's parent or guardian if the person is under 18 years of age, may submit written documentation to the local law enforcement agency contesting the designation. The local law enforcement agency shall review the documentation, and if the agency determines that the person is not a suspected gang member, associate, or affiliate, the agency shall remove the person from the shared gang database. The local law enforcement agency shall provide the person and, if the person is under 18 years of age, the person's parent or guardian, with written verification of the agency's decision within 30 days of submission of the written documentation contesting the designation. If the law enforcement agency denies the request for removal, the notice of its determination shall state the reason for the denial. If the law enforcement agency does not provide a verification of the agency's decision within the required 30-day period, the request to remove the person from the gang database shall be deemed denied. The person or, if the person is under 18 years of age, the person's parent or guardian may petition the court to review the law enforcement agency's denial of the request for removal and order the law enforcement agency to remove the person from the shared gang database pursuant to Section 186.35.

(f) Nothing in this section shall require a local law enforcement agency to disclose any information protected under Section 1040 or 1041 of the Evidence Code or any provision listed in Section 7920.505 of the Government Code.

Leg.H.

Added Stats 2017 ch 695 § 4 (AB 90), effective January 1, 2018. Amended Stats 2021 ch 615 § 331 (AB 474), effective January 1, 2022.

TITLE 8

Crimes Against the Person

CHAPTER 1

HOMICIDE

§ 190.2. Special Circumstances for Imposition of Death Penalty or Life Without Parole.

(a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the

murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(F) Oral copulation in violation of Section 287 or former Section 288a.

(G) Burglary in the first or second degree in violation of Section 460.

(H) Arson in violation of subdivision (b) of Section 451.

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.3, 190.4, and 190.5.

Leg.H.

Added by initiative measure § 6, approved November 7, 1978. Amended Stats 1989 ch 1165 § 16, approved by the voters, Prop 114, effective June 6, 1990; Amendment adopted by voters, Prop 115 § 10, effective June 6, 1990; Stats 1995 ch 478 § 2, approved by the voters, at the March 26, 1996, primary election (Prop 196), effective March 27, 1996; Stats 1998 ch 629 § 2 (SB 1878), approved by the voters at the March 7, 2000 primary election (Prop 18), effective March 8, 2000, amendment adopted by voters, Prop 21 § 11, effective March 8, 2000; Stats 2018 ch 423 § 43 (SB 1494), effective January 1, 2019.

CHAPTER 9

ASSAULT AND BATTERY

§ 241.2. Punishment—Assault on Any Person on School or Park Property.

(a)

(1) When an assault is committed on school or park property against any person, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) When a violation of this section is committed by a minor on school property, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling as deemed appropriate by the court at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

(b) "School," as used in this section, means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

(c) "Park," as used in this section, means any publicly maintained or operated park. It does not include any facility when used for professional sports or commercial events.

Leg.H.

1982 ch. 1087, 1984 ch. 483, 1987 ch. 828, 1989 ch. 394, 2001 ch. 484.

§ 243.2. Punishment—Battery Committed on Any Person on School, Park, or Hospital Property.

(a)

(1) Except as otherwise provided in Section 243.6, when a battery is committed on school property, park property, or the grounds of a public or private hospital, against any person, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(2) When a violation of this section is committed by a minor on school property, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling as deemed appropriate by the court at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Hospital" means a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, the licensure requirements of Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) "Park" means any publicly maintained or operated park. It does not include any facility when used for professional sports or commercial events.

(3) "School" means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

(c) This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

Leg.H.

1982 ch. 1087, 1984 ch. 483, 1987 ch. 828, 1989 chs. 394, 1306 § 4.5, 1993 ch. 252, 2001 ch. 484.

TITLE 9

Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

CHAPTER 2

ABANDONMENT AND NEGLECT OF CHILDREN

§ 273.65. Violation of Protective Order Relating to Children.

(a) Any intentional and knowing violation of a protective order issued pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or “a credible threat” of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) which results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one

year, by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

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

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

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

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

Leg.H.

Added Stats 1996 ch 1139 § 2 (AB 2647). Amended Stats 2011 ch 15 § 311 (AB 109), effective April 4, 2011, operative October 1, 2011.

CHAPTER 5.5

SEX OFFENDERS

§ 290. Sex Offender Registration Act; Persons Required to Register.

(a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which the person is residing, or the sheriff of the county if the person is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if the person is residing upon the campus or in any of its facilities, within five working days of coming into, or changing the person's residence within, any city, county, or city and county, or campus in which the person temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c)

(1) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape, or any act punishable under Section 286, 287, 288, or 289 or former Section 288a, Section 207 or 209 committed with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of former Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(2) Notwithstanding paragraph (1), a person convicted of a violation of subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 shall not be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor's date of birth to the person's date of birth, and the conviction is the only one requiring the person to register. This paragraph does not preclude the court from requiring a person to register pursuant to Section 290.006.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1)

(A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2)

(A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 287 or former Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 287, 288, or 289 or former Section 288a.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 287, 288, or 289 or former Section 288a.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 287 or former Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

(L) The person was convicted of violating paragraph (1) of subdivision (a) of former Section 262.

(M) The person was convicted of violating Section 264.1.

(N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.

(O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.

(P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 287 or former Section 288a.

(Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.

(R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.

(4)

(A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).

(B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:

(i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to

an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.

(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(5)

(A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if the appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit toward the mandated minimum registration period for any period for which the individual registers.

(B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of the individual's placement in the tier-to-be-determined category.

(e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

(f) This section does not require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

Leg.H.

Added Stats 2017 ch 541 § 2.5 (SB 384), effective January 1, 2018, operative January 1, 2021. Amended Stats 2018 ch 423 § 52 (SB 1494), effective January 1, 2019, operative January 1, 2021; Stats 2020 ch 79 § 2 (SB 145), effective January 1, 2021, operative January 1, 2021; Stats 2021 ch 626 § 25 (AB 1171), effective January 1, 2022.

§ 290.006. Offense Committed as Result of Sexual Compulsion or for Purposes of Sexual Gratification.

(a) Any person ordered by any court to register pursuant to the act, who is not required to register pursuant to Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) The person shall register as a tier one offender in accordance with paragraph (1) of subdivision (d) of Section 290, unless the court finds the person should register as a tier two or tier three offender and states on the record the reasons for its finding.

(c) In determining whether to require the person to register as a tier two or tier three offender, the court shall consider all of the following:

(1) The nature of the registerable offense.

(2) The age and number of victims, and whether any victim was personally unknown to the person at the time of the offense. A victim is personally unknown to the person for purposes of this paragraph if the victim was known to the offender for less than 24 hours.

(3) The criminal and relevant noncriminal behavior of the person before and after conviction for the registerable offense.

(4) Whether the person has previously been arrested for, or convicted of, a sexually motivated offense.

(5) The person's current risk of sexual or violent reoffense, including the person's risk level on the SARATSO static risk assessment instrument, and, if available from past supervision for a sexual offense, the person's risk level on the SARATSO dynamic and violence risk assessment instruments.

(d) This section shall become operative on January 1, 2021.

Leg.H.

Added Stats 2017 ch 541 § 4 (SB 384), effective January 1, 2018, operative January 1, 2021. Amended Stats 2020 ch 79 § 4 (SB 145), effective January 1, 2021, operative January 1, 2021.

§ 290.008. Registration Required for Specified Persons Discharged or Paroled; Violation of Specified Provisions; Records.

(a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act unless the duty to register is terminated pursuant to Section 290. or as otherwise provided by law.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 287, Section 288 or 288.5, paragraph (1) of

subdivision (b) of, or subdivision (c) or (d) of, former Section 288a, subdivision (a) of Section 289, or Section 647.6.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 287, 288, or 289, or former Section 288a.

(d)

(1) A tier one juvenile offender is subject to registration for a minimum of five years. A person is a tier one juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(2) A tier two juvenile offender is subject to registration for a minimum of 10 years. A person is a tier two juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A person who is required to register as a sex offender pursuant to this section may file a petition for termination from the sex offender registry in the juvenile court in the county in which he or she is registered at the expiration of his or her mandated minimum registration period, pursuant to Section 290.5.

(e) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(f) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This section shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(g) This section shall become operative on January 1, 2021.

Leg.H.

Added Stats 2017 ch 541 § 6 (SB 384), effective January 1, 2018, operative January 1, 2021. Amended Stats 2018 ch 423 § 55 (SB 1494), effective January 1, 2019, operative January 1, 2021.

TITLE 11

Crimes Against the Public Peace

§ 415.5. Unlawful Acts Committed in Buildings or Grounds of College or University—Punishments.

(a) Any person who (1) unlawfully fights within any building or upon the grounds of any school, community college, university, or state university or challenges another person within any building or upon the grounds to fight, or (2) maliciously and willfully disturbs another person within any of these buildings or upon the grounds by loud and unreasonable noise, or (3) uses offensive words within any of these buildings or upon the grounds which are inherently likely to provoke an immediate violent reaction is guilty of a misdemeanor punishable by a fine not exceeding four hundred dollars ($400) or by imprisonment in the county jail for a period of not more than 90 days, or both.

(b) If the defendant has been previously convicted once of a violation of this section or of any offense defined in Chapter 1 (commencing with Section 626) of Title 15 of Part 1, the defendant shall be sentenced to imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both that imprisonment and a fine of not exceeding one thousand dollars ($1,000), and shall not be released on probation, parole, or any other basis until not less than 10 days of imprisonment has been served.

(c) If the defendant has been previously convicted two or more times of a violation of this section or of any offense defined in Chapter 1 (commencing with Section 626) of Title 15 of Part 1, the defendant shall be sentenced to imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both that imprisonment and a fine of not exceeding one thousand dollars ($1,000), and shall not be released on probation, parole, or any other basis until not less than 90 days of imprisonment has been served.

(d) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Department of Justice containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

(e) As used in this section “state university,” “university,” “community college,” and “school” have the same meaning as these terms are given in Section 626.

(f) This section shall not apply to any person who is a registered student of the school, or to any person who is engaged in any otherwise lawful employee concerted activity.

Leg.H.

1969 ch. 1424, operative September 4, 1969, 1970 ch. 102, 1974 ch. 1263, 1976 ch. 298, 1980 ch. 684, 1983 ch. 1092, effective September 27, 1983, 1988 ch. 1113.

TITLE 14

Malicious Mischief

§ 594. Vandalism; Punishment.

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b)

(1) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more, vandalism is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars ($10,000) or more, by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2)

(A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court shall, when appropriate and feasible, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term “graffiti or other inscribed material” includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(g) This section shall become operative on January 1, 2002.

Leg.H.

Added Stats 1998 ch 851 § 2 (AB 1897), operative January 1, 2002, ch 852 § 1.2 (SB 1229), operative January 1, 2002, ch 853 § 1.6 (AB 1386), operative January 1, 2002. Amended Stats 1999 ch 83 § 145 (SB 966), operative January 1, 2002. Amendment adopted by voters, Prop 21 § 12.5, effective March 8, 2000. Amended Stats 2000 ch 50 § 2 (SB 1616), operative January 1, 2002; Stats 2008 ch 209 § 1 (AB 2609), effective January 1, 2009; Stats 2011 ch 15 § 406 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 594.05. "Damages".

(a) For purposes of Section 594, "damages" includes damage caused to public transit property and facilities, public parks property and facilities, and public utilities and water property and facilities, in the course of stealing or attempting to steal nonferrous material, as defined in Section 21608.5 of the Business and Professions Code.

(b) This section is declaratory of existing law.

Added Stats 2012 ch 82 § 3 (AB 1971), effective January 1, 2013.

TITLE 15

Miscellaneous Crimes

CHAPTER 1

SCHOOLS

§ 626.2. Entry on Campus by Suspended or Dismissed Student or Employee; Punishment.

Every student or employee who, after a hearing, has been suspended or dismissed from a community college, a state university, the university, or a public or private school for disrupting the orderly operation of the campus or facility of the institution, and as a condition of the suspension or dismissal has been denied access to the campus or facility, or both, of the institution for the period of the suspension or in the case of dismissal for a period not to exceed one year; who has been served by registered or certified mail, at the last address given by that person, with a written notice of the suspension or dismissal and condition; and who willfully and knowingly enters upon the campus or facility of the institution to which he or she has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor and shall be punished as follows:

(a) Upon a first conviction, by a fine not exceeding five hundred dollars ($500), by imprisonment in a county jail for a period of not more than six months, or by both that fine and imprisonment.

(b) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both that imprisonment and a fine not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(c) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both that imprisonment and a fine not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

Knowledge shall be presumed if notice has been given as prescribed in this section. The presumption established by this section is a presumption affecting the burden of proof.

Leg.H.

Added Stats 1969 ch 1424 § 4, effective September 4, 1969. Amended Stats 1970 ch 102 § 569; Stats 1974 ch 988 § 2, ch 1183 § 2; Stats 1983 ch 143 § 204; Stats 2008 ch 726 § 2 (SB 1666), effective January 1, 2009; Stats 2009 ch 140 § 142 (AB 1164), effective January 1, 2010.

§ 626.6. Person Not a Student, Officer or Employee—Interference with Peaceful Conduct of Campus—Failure to Leave or Reentering Campus—Punishment.

(a) If a person who is not a student, officer or employee of a college or university and who is not required by his or her employment to be on the campus or any other facility owned, operated, or controlled by the governing board of that college or university, enters a campus or facility, and it reasonably appears to the chief administrative officer of the campus or facility, or to an officer or employee designated by the chief administrative officer to maintain order on the campus or facility, that the person is committing any act likely to interfere with the peaceful conduct of the activities of the campus or facility, or has entered the campus or facility for the purpose of committing any such act, the chief administrative officer or his or her designee may direct the person to leave the campus or facility. If that person fails to do so or if the person willfully and knowingly reenters upon the campus or facility within seven days after being directed to leave, he or she is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine of not more than five hundred dollars ($500), by imprisonment in the county jail for a period of not more than six months, or by both that fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both that imprisonment and a fine of not more than five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both that imprisonment and a fine of not more than five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(b) The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(c) When a person is directed to leave pursuant to subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the campus or facility within seven days he or she will be guilty of a crime.

Leg.H.

1969 ch. 1424, operative September 4, 1969, 1970 ch. 102, 1974 chs. 988, 1183, 1983 ch. 143, 1989 ch. 1054, 1995 ch. 163.

§ 626.7. Interference with Peaceful Conduct of Campus Activities—Exceptions.

(a) If a person who is not a student, officer, or employee of a public school, and who is not required by his or her employment to be on the campus or any other facility owned, operated, or controlled by the governing board of that school, enters a campus or facility outside of the common areas where public business is conducted, and it reasonably appears to the chief administrative officer of the campus or facility, or to an officer or employee designated by the chief administrative officer to maintain order on the campus or facility, that the person is committing any act likely to interfere with the peaceful conduct of the activities of the campus or facility, or has entered the campus or facility for the purpose of committing any such act, the chief administrative officer or his or her designee may direct the person to leave the campus or facility. If that person fails to do so or if the person returns without following the posted requirements to contact the administrative offices of the campus, he or she is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine of not more than five hundred dollars ($500), by imprisonment in a county jail for a period of not more than six months, or by both that fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both that imprisonment and a fine of not more than five hundred dollars ($500), and the defendant shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both that imprisonment and a fine of not more than five hundred dollars ($500), and the defendant shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

For purposes of this section, a representative of a school employee organization engaged in activities related to representation, as provided for in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, shall be deemed a person required by his or her employment to be in a school building or on the grounds of a school.

(b) The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(c) When a person is directed to leave pursuant to subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the campus or facility without following the posted requirements to contact the administrative offices of the campus, he or she will be guilty of a crime.

(d) Notwithstanding any other subdivision of this section, the chief administrative officer, or his or her designee, shall allow a person previously directed to leave the campus or facility pursuant to this section to reenter the campus if the person is a parent or guardian of a pupil enrolled at the campus or facility who has to retrieve the pupil for disciplinary reasons, for medical attention, or for a family emergency.

Leg.H.

1995 ch. 163, 2002 ch. 343 (AB 2593).

§ 626.8. Disruptive Entry or Entry of Sex Offender upon School Grounds.

(a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, is guilty of a misdemeanor if he or she does any of the following:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Chapter 1 (commencing with Section 38000) of Part 23 of Division 3 of Title 2 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or a Department of the California Highway Patrol peace officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1).

(3) Has otherwise established a continued pattern of unauthorized entry.

(4) Willfully or knowingly creates a disruption with the intent to threaten the immediate physical safety of any pupil in preschool, kindergarten, or any of grades 1 to 8, inclusive, arriving at, attending, or leaving from school.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine not exceeding five hundred dollars ($500), by imprisonment in a county jail for a period of not more than six months, or by both that fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(c) As used in this section, the following definitions apply:

(1) “Lawful business” means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(2) “Continued pattern of unauthorized entry” means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of the school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(3) “School” means any preschool or public or private school having kindergarten or any of grades 1 to 12, inclusive.

(d) When a person is directed to leave pursuant to paragraph (1) of subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place within seven days he or she will be guilty of a crime.

(e) This section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of speech or assembly.

Leg.H.

Added Stats 1969 ch 1424 § 4, effective September 4, 1969. Amended Stats 1971 ch 1384 § 1; Stats 1974 ch 988 § 5, ch 1183 § 5; Stats 1979 ch 548 § 1; Stats 1981 ch 746 § 1; Stats 1982 ch 1308 § 1; Stats 1983 ch 1292 § 4; Stats 1989 ch 1054 § 2; Stats 1992 ch 887 § 9 (AB 3816). Supplemented by Governor's Reorganization Plan No.1 of 1995, effective July 12, 1995. Amended Stats 1996 ch 305 § 46 (AB 3103); Stats 2006 ch 337 § 24 (SB 1128), effective September 20, 2006; Stats 2008 ch 726 § 3 (SB 1666), effective January 1, 2009; Stats 2009 ch 140 § 143 (AB 1164), effective January 1, 2010; Stats 2011 ch 161 § 1 (AB 123), effective January 1, 2012.

§ 626.9. Possession of Firearm in School Zone or on Grounds of Public or Private University or College; Exceptions.

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (4) of subdivision (e), shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision does not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625, 25630, or 25645.

(5) When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is not in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but within a distance of 1,000 feet from the grounds of the public or private school.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragrap h(4) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(f)

(1) A person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) A person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400.

(B) By imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) A person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g)

(1) A person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) A person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) A person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(l) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (d) of Section 7582.1 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

(5) Paragraph (2) of subdivision (c) of Section 26300.

(p) This section does not apply to a peace officer appointed pursuant to Section 830.6 who is authorized to carry a firearm by the appointing agency.

(q)

(1) This section does not apply to the activities of a program involving shooting sports or activities, including, but not limited to, trap shooting, skeet shooting, sporting clays, and pistol shooting, that are sanctioned by a school, school district, college, university, or other governing body of the institution, that occur on the grounds of a public or private school or university or college campus.

(2) This section does not apply to the activities of a state-certified hunter education program pursuant to Section 3051 of the Fish and Game Code if all firearms are unloaded and participants do not possess live ammunition in a school building.

Leg.H.

Added Stats 1970 ch 259 § 2. Amended Stats 1974 ch 546 § 17; Stats 1976 ch 1139 § 256, operative July 1, 1977; Stats 1983 ch 143 § 207, ch 1292 § 5; Stats 1985 ch 295 § 7; Stats 1988 ch 854 § 1; Stats 1991 ch 1202 § 4 (SB 377); Stats 1994 ch 1015 § 1 (AB 645); Stats 1995 ch 659 § 1 (AB 624); Stats 1998 ch 115 § 1 (AB 2609); Stats 1999 ch 83 § 146 (SB 966); Stats 2010 ch 178 § 59 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 15 § 422 (AB 109), effective April 4, 2011, operative January 1, 2012; Stats 2015 ch 303 § 390 (AB 731), effective January 1, 2016, ch 766 § 1 (SB 707), effective January 1, 2016 (ch 766 prevails); Stats 2017 ch 779 § 1 (AB 424), effective January 1, 2018.

§ 626.10. Possession of Other Weapons in Public or Private Educational Institution; Exceptions.

(a)

(1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 21/2 inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO[2] pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1

to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 21/2 inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 21/2 inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 21/2 inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 21/2 inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO[2] pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 16780, or a stun gun, as defined in Section 17230, upon the grounds of, or within, a public or private college or university campus is guilty of a misdemeanor.

Leg.H.

Added Stats 1974 ch 103 § 1, effective March 26, 1974, operative July 1, 1974; Stats 1983 ch 1139 § 1; Stats 1984 ch 339 § 1; Stats 1985 ch 1227 § 2; Stats 1986 ch 1350 § 2; Stats 1988 ch 854 § 2, ch 1113 § 5.5; Stats 1993 ch 598 § 4 (SB 292), ch 599 § 2 (SB 647); Stats 1995 ch 128 § 1 (AB 1222); Stats 1996 ch 124 § 85 (AB 3470); Stats 2008 ch 676 § 1 (AB 2470), effective January 1, 2009; Stats 2009 ch 258 § 1 (AB 870), effective January 1, 2010; Stats 2010 ch 178 § 61 (SB 1115) (ch 178 prevails), effective January 1, 2011, operative January 1, 2012, ch 328 § 157 (SB 1330), effective January 1, 2011; Stats 2011 ch 15 § 426 (AB 109) (ch 15 prevails), effective April 4, 2011, operative January 1, 2012, ch 285 § 15 (AB 1402), effective January 1, 2012; Stats 2013 ch 76 § 147.5 (AB 383), effective January 1, 2014.

§ 626.81. Entry by Registered Sex Offender Into School Building or Upon School Ground Without Lawful Business or Written Permission Prohibited; Permission and Notification; Punishment.

(a) A person who is required to register as a sex offender pursuant to Section 290, who comes into any school building or upon any school ground without lawful business thereon and written permission indicating the date or dates and times for which permission has been granted from the chief administrative official of that school, is guilty of a misdemeanor.

(b)

(1) The chief administrative official of a school may grant a person who is subject to this section and not a family member of a pupil who attends that school, permission to come into a school building or upon the school grounds to volunteer at the school, provided that, notwithstanding subdivisions (a) and (c) of Section 290.45, at least 14 days prior to the first date for which permission has been granted, the chief administrative official notifies or causes to be notified the parent or guardian of each child attending the school that a person who is required to register as a sex offender pursuant to Section 290 has been granted permission to come into a school building or upon school grounds, the date or dates and times for which permission has been granted, and his or her right to obtain information regarding the person from a designated law enforcement entity pursuant to Section 290.45. The notice required by this paragraph shall be provided by one of the methods identified in Section 48981 of the Education Code.

(2) Any chief administrative official or school employee who in good faith disseminates the notification and information as required by paragraph (1) shall be immune from civil liability for action taken in accordance with that paragraph.

(c) Punishment for a violation of this section shall be as follows:

(1) Upon a first conviction by a fine of not exceeding five hundred dollars ($500), by imprisonment in a county jail for a period of not more than six months, or by both the fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of this section, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of this section, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(d) Nothing in this section shall preclude or prohibit prosecution under any other provision of law.

Leg.H.

Added Stats 2006 ch 337 § 25 (SB 1128), effective September 20, 2006. Stats 2013 ch 279 § 1 (SB 326), effective January 1, 2014.

CHAPTER 1.4

INTERCEPTION OF WIRE, ELECTRONIC DIGITAL PAGER, OR ELECTRONIC CELLULAR TELEPHONE COMMUNICATIONS

§ 629.52. [Effective until January 1, 2025; Repealed effective January 1, 2025]. Ex Parte Order for Interception.

Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, fentanyl, or their precursors or analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, a violation of Section 209, or the commission of a felony involving a destructive device in violation of Section 18710, 18715, 18720, 18725, 18730, 18740, 18745, 18750, or 18755.

(3) A felony violation of Section 186.22.

(4) A felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) A violation of Section 236.1.

(6) An attempt or conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for

locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either unlikely to succeed if tried or too dangerous.

Leg.H.

Added Stats 1995 ch 971 § 10 (SB 1016). Amendment adopted by voters, Prop 21 § 13, effective March 8, 2000; Amended Stats 2002 ch 605 § 3 (AB 74); Stats 2010 ch 178 § 62 (SB 1115), effective January 1, 2011, operative January 1, 2012, ch 707 § 3 (SB 1428) (ch 707 prevails), effective January 1, 2011; Stats 2011 ch 285 § 16 (AB 1402), effective January 1, 2012; Stats 2014 ch 712 § 1 (SB 955), effective January 1, 2015, ch 745 § 1 (SB 35), effective January 1, 2015, repealed January 1, 2020. Amended Stats 2018 ch 294 § 1 (AB 1948), effective January 1, 2019, repealed January 1, 2020; Stats 2019 ch 607 § 1 (AB 304), effective January 1, 2020, repealed January 1, 2025 (repealer amended).

§ 629.98. Repeal of Chapter.

This chapter shall only remain in effect until January 1, 2025, and as of that date is repealed.

Leg.H.

Added Stats 1995 ch 971 § 10 (SB 1016). Amended Stats 1997 ch 355 § 6 (SB 688); Stats 2002 ch 605 § 25 (AB 74); Stats 2007 ch 391 § 1 (AB 569), effective January 1, 2008, repealed January 1, 2012; Stats 2011 ch 663 § 2 (SB 61), effective January 1, 2012, repealed January 1, 2015; Stats 2014 ch 745 § 1 (SB 35), effective January 1, 2015, repealed January 1, 2020. Amended Stats 2019 ch 607 § 1 (AB 304), effective January 1, 2020, repealed January 1, 2025.

TITLE 16

General Provisions

§ 667. Habitual Criminals; Enhancement; Exceptions.

(a)

(1) Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision does not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious or violent felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Care Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication constitutes a prior serious or violent felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time the juvenile committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a serious or violent felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)

(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 311.11, and Section 314.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(f)

(1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385.

(g) Prior serious or violent felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony serious or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 7, 2012.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Leg.H.

Initiative adopted June 8, 1982. Amended Stats 1986 ch 85 § 1.5, effective May 6, 1986; Stats 1989 ch 1043 § 1; Stats 1994 ch 12 § 1 (AB 971), effective March 7, 1994; Amendment approved by voters, Prop. 36 § 2, effective November 7, 2012; Stats 2018 ch 423 § 64 (SB 1494), effective January 1, 2019; Stats 2018 ch 1013 § 1 (SB 1393), effective January 1, 2019 (ch 1013 prevails); Stats 2019 ch 497 § 195 (AB 991), effective January 1, 2020.

§ 667.1. References in Section 667 to Existing Statutes.

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after, November 7, 2012 all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on November 7, 2012.

Leg.H.

Added by initiative measure effective March 8, 2000 (Prop 21 § 14). Amended Stats 2006 ch 337 § 29 (SB 1128), effective September 20, 2006. Amendment approved by voters, Prop. 36 § 3, effective November 7, 2012.

§ 667.5. Enhancement of Prison Terms for New Offenses.

Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) If one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant when the prior offense was one of the violent felonies specified in subdivision (c). However, an additional term shall not be imposed under this subdivision for

any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(b) Except when subdivision (a) applies, if the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code, provided that an additional term shall not be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense that results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended.

(c) The Legislature finds and declares that the following specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person. For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of former Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 287 or of former Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on a person other than an accomplice, which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under subdivision (h) of Section 1170.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under subdivision (h) of Section 1170 if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole that is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k)

(1) Notwithstanding subdivisions (d) and (g) or any other law, when one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision does not apply when a full, separate, and consecutive term is imposed pursuant to any other law.

Leg.H.

Added Stats 1976 ch 1139 § 268, operative July 1, 1977. Amended Stats 1977 ch 2, § 1, effective December 16, 1976, operative July 1, 1977, ch 165 § 13, effective June 29, 1977, operative July 1, 1977; Stats 1980 ch 587 § 3; Stats 1983 ch 229 § 1; Stats 1985 ch 402 § 1; Stats 1986 ch 645 § 1; Stats 1987 ch 611 § 1; Stats 1988 ch 70 § 1, ch 89 § 1.5, ch 432 § 1, ch 1484 § 1, ch 1487 § 1.1; Stats 1989 ch 1012 § 1; Stats 1990 ch 18 § 1 (AB 662); Stats 1991 ch 451 § 1 (AB 1393); Stats 1993 ch 162 § 3 (AB 112), ch 298 § 2 (AB 31), ch 610 § 10 (AB 6), effective September 30, 1993, ch 611 § 11 (SB 60), effective September 30, 1993; Stats 1994 ch 1188 § 6 (SB 59); Stats 1997 ch 371 § 1 (AB 793), ch 504 § 2 (AB 115); amendment adopted by voters, Prop 21 § 15, effective March 8, 2000; Stats 2002 ch 606 § 2 (AB 1838), effective September 17, 2002; Stats 2006 ch 337 § 30 (SB 1128), effective September 20, 2006; amendment approved by voters, Prop. 83 § 9, effective November 8, 2006; Stats 2010 ch 178 § 63 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 15 § 443 (AB 109), effective April 4, 2011, operative January 1, 2012, ch 39 § 23 (AB 117), effective June 30, 2011, operative January 1, 2012; Stats 2011–2012 1st Ex Sess ch 12 § 10 (ABX1 17), effective September 21, 2011, operative January 1, 2012; Stats 2012 ch 24 § 19 (AB 1470), effective June 27, 2012, ch 43 § 22 (SB 1023), effective June 27, 2012; Stats 2014 ch 442 § 10 (SB 1465), effective September 18, 2014; Stats 2018 ch 423 § 65 (SB 1494), effective January 1, 2019; Stats 2019 ch 590 § 1 (SB 136), effective January 1, 2020; Stats 2021 ch 626 § 28 (AB 1171), effective January 1, 2022.

PART 2

Criminal Procedure

TITLE 3

Additional Provisions Regarding Criminal Procedure

§ 851.7 Petition to seal record of arrest for misdemeanor during minority; Access to sealed record.

(a) Any person who has been arrested for a misdemeanor, with or without a warrant, while a minor, may, during or after minority, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, if any of the following occurred:

(1) The person was released pursuant to paragraph (1) of subdivision (b) of Section 849.

(2) Proceedings against the person were dismissed, or the person was discharged, without a conviction.

(3) The person was acquitted.

(b) If the court finds that the petitioner is eligible for relief under subdivision (a), it shall issue its order granting the relief prayed for. Thereafter, the arrest, detention, and any further proceedings in the case shall be

deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(c) This section applies to arrests and any further proceedings that occurred before, as well as those that occur after, the effective date of this section.

(d) This section does not apply to any person taken into custody pursuant to Section 625 of the Welfare and Institutions Code, or to any case within the scope of Section 781 of the Welfare and Institutions Code, unless, after a finding of unfitness for the juvenile court or otherwise, there were criminal proceedings in the case, not culminating in conviction. If there were criminal proceedings not culminating in conviction, this section shall be applicable to the criminal proceedings if the proceedings are otherwise within the scope of this section.

(e) This section does not apply to arrests for, and any further proceedings relating to, any of the following:

(1) Offenses for which registration is required under Section 290.

(2) Offenses under Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Offenses under the Vehicle Code or any local ordinance relating to the operation, stopping, standing, or parking of a vehicle.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted in evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g)

(1) A record that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record. The court shall approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed pursuant to this subdivision. A ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding. This subdivision does not impose any discovery obligations on a prosecuting attorney that do not already exist.

(2) This subdivision does not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(h) This section applies in any case in which a person was under 21 years of age at the time of the commission of an offense to which this section applies if that offense was committed prior to March 7, 1973.

Leg.H.

Added Stats 1967 ch 1373 § 1. Amended Stats 1970 ch 497 § 1; Stats 1974 ch 401 § 1; Stats 2019 ch 50 § 1 (AB 1537), effective January 1, 2020; Stats 2021 ch 124 § 35 (AB 938), effective January 1, 2022.

TITLE 7

Proceedings at Trial and Before Judgment

CHAPTER 4.5

TRIAL COURT SENTENCING

ARTICLE 1

Initial Sentencing

§ 1170. Determinate Sentencing; Sentence Recall; Medical Release.

(a)

(1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this

chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b)

(1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph(2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (6) present.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d)

(1)

(A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph A this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D) inclusive, of paragraph (2), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(11) In addition to the criteria in paragraph (6) the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e)

(1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall

arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h)

(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5)

(A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on

or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

Leg.H.

Added Stats 2007 ch 3 § 3 (SB 40), effective March 30, 2007. Amended Stats 2007 ch 740 § 2 (AB 1539), effective January 1, 2008; Stats 2008 ch 416 § 2 (SB 1701), effective January 1, 2009; Stats 2010 ch 256 § 6 (AB 2263) (ch 256 prevails), effective January 1, 2011, operative January 1, 2012, ch 328 § 162 (SB 1330), effective January 1, 2011; Stats 2011 ch 15 § 451 (AB 109), effective April 4, 2011, operative January 1, 2012, ch 39 § 28 (AB 117), effective June 30, 2011, operative January 1, 2012, ch 136 § 4 (AB 116), effective July 27, 2011, operative January 1, 2012; Stats 2011–2012 1st Ex Sess ch 12 § 12.4 (ABX1 17), effective September 21, 2011, operative January 1, 2012; Stats 2011 ch 361 § 7 (SB 576), effective September 29, 2011, operative until October 1, 2011, ch 361 § 7.7 (SB 576), effective September 29, 2011, operative October 1, 2011; Stats 2012 ch 43 § 28 (SB 1023), effective June 27, 2012, operative January 1, 2014, ch 828 § 2 (SB 9), effective January 1, 2013, operative January 1, 2014; Stats 2013 ch 32 § 6 (SB 76), effective June 27, 2013, operative January 1, 2014, ch 76 § 152 (SB 463), effective January 1, 2014, operative January 1, 2017, ch 508 § 6 (SB 463), effective January 1, 2014, operative January 1, 2017 (ch 508 prevails); Stats 2014 ch 26 § 17 (AB 1468), effective June 20, 2014, operative January 1, 2017, ch 612 § 2 (AB 2499), effective January 1, 2015, operative January 1, 2017; Stats 2015 ch 378 § 2 (AB 1156), effective January 1, 2016, operative January 1, 2017; Stats 2016 ch 696 § 2 (AB 2590), effective January 1, 2017, operative January 1, 2022; Stats 2016 ch 867 § 2.1 (SB 1084), effective January 1, 2017, operative January 1, 2022; Stats 2016 ch 887 § 6.3 (SB 1016), effective January 1, 2017, operative January 1, 2022; Stats 2017 ch 287 § 2 (SB 670), effective January 1, 2018, operative January 1, 2022 (ch 287 prevails); Stats 2017 ch 561 § 188 (AB 1516), effective January 1, 2018, operative January 1, 2022; Stats 2018 ch 36 § 18 (AB 1812), effective June 27, 2018, operative January 1, 2022; Stats 2018 ch 1001 § 2 (AB 2942), effective January 1, 2019, operative January 1, 2022; Stats 2020 ch 29 § 15 (SB 118), effective August 6, 2020, operative January 1, 2022; Stats 2021 ch 695 § 5 (AB 124), effective January 1, 2022; Stats 2021 ch 719 § 2 (AB 1540), effective January 1, 2022; Stats 2021 ch 731 § 1.3 (SB 567), effective January 1, 2022 (ch 731 prevails).

TITLE 8

Judgment and Execution

CHAPTER 1

JUDGMENT

§ 1192.7. Limitation of Plea Bargaining.

(a)

(1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Leg.H.

Added by initiative measure effective June 8, 1982. Amended Stats 1986 ch 1299 § 11 (ch 489 prevails), ch 489 § 1; Stats 1988 ch 89 § 2, ch 432 § 2; Stats 1989 ch 1043 § 2, ch 1044 § 2.5; Stats 1993 ch 588 § 1 (AB 327), ch 610 § 16 (AB 6), effective September 30, 1993, operative until January 1, 1994, ch 610 § 16.5 (AB 6), effective September 30, 1993, operative January 1, 1994, ch 611 § 18 (SB 60), effective September 30, 1993, operative until January 1, 1994, ch 611 § 18.5 (SB 60), effective September 30, 1993, operative January 1, 1994; Stats 1998 ch 754 § 1 (AB 357), ch 936 § 13.5 (AB 105), effective September 28, 1998; Stats 1999 ch 298 § 1 (AB 381). Amendment adopted by voters, Prop 21 § 17, effective March 8, 2000. Amended Stats 2002 ch 606 § 3 (AB 1838), effective September 17, 2002; Stats 2006 ch 337 § 37 (SB 1128), effective September 20, 2006; Stats 2010 ch 178 § 73 (SB 1115), effective January 1, 2011, operative January 1, 2012.

§ 1202.05. No Visitation Between Inmate Convicted of Sex Crime and Child Victim; Hearing.

(a) Whenever a person is sentenced to the state prison on or after January 1, 1993, for violating Section 261, 264.1, 266c, 285, 286, 287, 288, 288.5, or 289, or former Section 288a, and the victim of one or more of those offenses is a child under the age of 18 years, the court shall prohibit all visitation between the defendant and the child victim. The court's order shall be transmitted to the Department of Corrections, to the parents, adoptive parents, or guardians, or a combination thereof, of the child victim, and to the child victim. If any parent, adoptive parent, or legal guardian of the child victim, or the child victim objects to the court's order, he or she may request a hearing on the matter. Any request for a hearing on the matter filed with the sentencing court shall be referred to the appropriate juvenile court pursuant to Section 362.6 of the Welfare and Institutions Code.

(b) The Department of Corrections is authorized to notify the sentencing court of persons who were sentenced to the state prison prior to January 1, 1993, for violating Section 261, 264.1, 266c, 285, 286, 288, 288.5, or 289, or former Section 288a, when the victim of one or more of those offenses was a child under the age of 18 years.

Upon notification by the department pursuant to this subdivision, the sentencing court shall prohibit all visitation between the defendant and the child victim, according to the procedures specified in subdivision (a).

Leg.H.

Added Stats 1992 ch 1008 § 2 (AB 3560); Amended Stats 2018 ch 423 § 88 (SB 1494), effective January 1, 2019.

PART 3

Of Imprisonment and Death Penalty

TITLE 1

Imprisonment of Male Prisoners in State Prisons

CHAPTER 3

CIVIL RIGHTS OF PRISONERS

ARTICLE 2

Prisoners as Witnesses

§ 2622. Testimony of Prisoners in Criminal Cases—Deposition.

When the order for personal appearance is not made pursuant to Section 2620 or Section 2621 the deposition of the prisoner may be taken in the manner provided for in the case of a witness who is sick, and Chapter 4 (commencing with Section 1335) of Title 10 of Part 2 shall, so far as applicable, govern in the application for and in the taking and use of that deposition. The deposition may be taken before any magistrate or notary public of the county in which the prison is situated; or in case the defendant is unable to pay for taking the deposition, before an officer of the prison designated by the board, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken under this section, shall have authority to administer, and shall administer, an oath to the witness that his or her testimony shall be the truth, the whole truth, and nothing but the truth.

Leg.H.

1941 ch. 802, 1987 ch. 828.

§ 2623. Testimony of Prisoners in Civil Cases—How Taken.

If in a civil action or special proceeding a witness be a prisoner, confined in a state prison within this state, an order for the prisoner's examination in the prison by deposition may be made.

1. By the court itself in which the action or special proceeding is pending, unless it be a small claims court.

2. By a judge of the superior court of the county where the action or proceeding is pending, if pending before a small claims court or before a judge or other person out of court.

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. The deposition, when ordered, shall be taken in accordance with Section 2622.

Leg.H.

1941 ch. 802, 1951 ch. 1608, 1998 ch. 931, effective September 28, 1998.

§ 2624. Incarcerated Witness' Testimony Via Two-Way Audiovisual Communication; Prohibition against Inducement.

(a) Notwithstanding any other provision of law, a court may, upon the submission of a written request by the party calling the witness, order an incarcerated witness to testify in legal proceedings via two-way electronic audiovisual communication.

(b) As used in this section, "legal proceedings" includes preliminary hearings, civil trials, and criminal trials.

(c) With reference to criminal trials only, the procedure described in this section shall only be used with the consent of both parties expressed in open court, and, in consultation with the defendant's counsel, upon a waiver by the defendant of his or her right to compel the physical presence of the witness, pursuant to the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution. This waiver may be rescinded by the defendant upon a showing of good cause.

(d) No inducement shall be offered nor any penalty imposed in connection with a defendant's consent to allow a witness to testify via closed-circuit television.

Leg.H.

1998 ch. 122.

§ 2625. Notice to Prisoner of Proceeding to Terminate Parental Rights; Temporary Removal from Institution and Production Before Court; Opportunity to Participate in Hearing by Videoconference; Legislative Intent.

(a) For the purposes of this section only, the term "prisoner" includes any individual in custody in a state prison, the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of persons with mental health disorders or in any other public or private treatment facility.

(b) In a proceeding brought under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, and Section 366.26 of the Welfare and Institutions Code, if the proceeding seeks to terminate the parental rights of a prisoner, or a proceeding brought under Section 300 of the Welfare and Institutions Code, if the proceeding seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the proceeding is pending, or a judge thereof, shall order notice of any court proceeding regarding the proceeding transmitted to the prisoner.

(c) Service of notice shall be made pursuant to Section 7881 or 7882 of the Family Code or Section 290.2, 291, or 294 of the Welfare and Institutions Code, as appropriate.

(d) Upon receipt by the court of a statement from the prisoner or the prisoner's attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. A proceeding may not be held under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 366.26 of the Welfare and Institutions Code and a petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may not be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or other person in charge of the institution, or a designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.

(e) In any other action or proceeding in which a prisoner's parental or marital rights are subject to adjudication, an order for the prisoner's temporary removal from the institution and for the prisoner's production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 15 days before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner's presence is no longer required, to return the prisoner to the institution from which the prisoner was taken. The expense of executing the order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of ____ (as the case may be).

The people of the State of California to the warden of ____:

An order having been made this day by me, that (name of prisoner) be produced in this court as a party in the case of ____, you are commanded to deliver (name of prisoner) into the custody of ____ for the purpose of (recite purposes).

Dated this ____ dayof ____, 20____.

(f) When a prisoner is removed from the institution pursuant to this section, the prisoner shall remain in the constructive custody of the warden, superintendent, or other person in charge of the institution.

(g) A prisoner who is a parent of a child involved in a dependency hearing described in this section and who has either waived the right to physical presence at the hearing pursuant to subdivision (d) or who has not been ordered before the court may, at the court's discretion, in order to facilitate the parent's participation, be given the opportunity to participate in the hearing by videoconference, if that technology is available, and if that participation otherwise complies with the law. If videoconferencing technology is not available, teleconferencing may be utilized to facilitate parental participation. Because of the significance of dependency court hearings for parental rights and children's long-term care, physical attendance by the parent at the hearings is preferred to participation by videoconference or teleconference. This subdivision does not limit a prisoner's right to physically attend a dependency hearing as provided in this section. This section does not authorize the use of videoconference or teleconference to replace in-person family visits with prisoners.

(h) It is the intent of the Legislature to maintain internal job placement opportunities and preserve earned privileges for prisoners, and prevent the removal of prisoners subject to this section from court-ordered courses as a result of their participation in the proceedings described in this section.

(i) Notwithstanding any other law, a court may not order the removal and production of a prisoner sentenced to death, whether or not that sentence is being appealed, in any action or proceeding in which the

prisoner's parental rights are subject to adjudication.

Leg.H.

Added Stats 1974 ch 1462 § 1. Amended Stats 1976 ch 1376 § 2; Stats 1983 ch 301 § 1; Stats 1991 ch 820 § 1 (SB 475); Stats 1992 ch 163 § 110 (AB 2641), operative January 1, 1994; Stats 1996 ch 805 § 1 (AB 1325); Stats 2002 ch 65 § 1 (AB 2336); Stats 2004 ch 20 § 1 (AB 44), effective March 5, 2004; Stats 2010 ch 482 § 1 (SB 962), effective January 1, 2011; Stats 2019 ch 9 § 5 (AB 46), effective January 1, 2020.

PART 4

PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

TITLE 1

Investigation and Control of Crimes and Criminals

CHAPTER 1

INVESTIGATION, IDENTIFICATION, AND INFORMATION RESPONSIBILITIES OF THE DEPARTMENT OF JUSTICE

ARTICLE 3

Criminal Identification and Statistics

§ 11105. State Summary Criminal History Information; to Whom Information Furnished; Fee.

(a)

(1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may perform state and federal criminal history information checks as provided for in subdivision (u). The Department of Justice shall provide a state or federal response to the agency, officer, or official pursuant to subdivision (p).

(11) A city, county, city and county, or district, or an officer or official thereof, if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city, county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26)

(A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) A peace officer of the state other than those included in subdivision (b).

(3) An illegal dumping enforcement officer as defined in subdivision (i) of Section 830.7.

(4) A peace officer of another country.

(5) Public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) A person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) An individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10)

(A)

(i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) A campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives

and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) A foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k)

(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As

used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(*l*)

(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m)

(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n)

(1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice

shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o)

(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 1300 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in, Section 1300 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in section 1300 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p)

(1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. The Commission on Teacher Credentialing shall receive every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u)

(1) If a fingerprint-based criminal history information check is required pursuant to any statute, that check shall be requested from the Department of Justice and shall be applicable to the person identified in the referencing statute. The agency or entity identified in the statute shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of the types of applicants identified in the referencing statute, for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of the state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(2) If requested, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history information check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute.

(3) The Department of Justice shall provide a state- or federal-level response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute, pursuant to the identified subdivision.

(4) The agency or entity identified in the referencing statute shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2, for persons described in the referencing statute.

(5) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the request described in this subdivision.

Leg.H.

Added Stats 1975 ch 1222 § 2. Amended Stats 1976 ch 683 § 1; Stats 1978 ch 475 § 1; Stats 1979 ch 982 § 8; Stats 1981 ch 269 § 1, ch 967 § 1, ch 1103 § 3; Stats 1983 ch 323 § 63.3, effective July 21, 1983, ch 1297 § 3, operative until August 31, 1984, ch 323 § 63.3, operative August 31, 1984; Stats 1985 ch 1234 § 2; Stats 1986 ch 923 § 1; Stats 1990 ch 1570 § 2 (AB 2617); Stats 1993 ch 1269 § 12 (AB 1972), ch 1270 § 3 (SB 947); Stats 1995 ch 806 § 2 (AB 1571); Stats 1996 ch 1023 § 397.1 (SB 1497), effective September 29, 1996, ch

1026 § 3 (AB 2104); Stats 1997 ch 598 § 13 (SB 633); Stats 1998 ch 606 § 9 (SB 1880); Stats 2000 ch 421 § 3 (SB 2161), effective September 13, 2000, ch 808 § 111.1 (AB 1358), effective September 28, 2000; Stats 2002 ch 627 § 2 (SB 900); Stats 2004 ch 184 § 1 (SB 1314), effective July 23, 2004, ch 570 § 1 (SB 1388); Stats 2005 ch 99 § 2 (SB 647) (ch 99 prevails), effective July 21, 2005, ch 279 § 16 (SB 1107); Stats 2007 ch 104 § 1 (AB 104), effective January 1, 2008, ch 201 § 3 (AB 1048), effective January 1, 2008, ch 581 § 1 (SB 340), effective January 1, 2008, ch 583 § 17.4 (SB 703), effective January 1, 2008; Stats 2008 ch 125 § 81 (AB 1301), effective January 1, 2009; Stats 2009 ch 97 § 1 (AB 297), effective January 1, 2010, ch 441 § 1 (AB 428), effective January 1, 2010; Stats 2010 ch 178 § 87 (SB 1115), effective January 1, 2011, operative January 1, 2012, ch 652 § 13 (SB 1417) (ch 652 prevails), effective January 1, 2011; Stats 2011 ch 285 § 21 (AB 1402), effective January 1, 2012; Stats 2012 ch 43 § 61 (SB 1023), effective June 27, 2012, ch 162 § 134 (SB 1171), effective January 1, 2013, ch 256 § 2 (AB 2343), effective January 1, 2013 (ch 256 prevails); Stats 2013 ch 458 § 2 (AB 971), effective January 1, 2014; Stats 2014 ch 472 § 1 (AB 2404), effective January 1, 2015, Stats 2014 ch 708 § 5.5 (AB 1585), effective January 1, 2015; Stats 2017 ch 19 § 22 (AB 111), effective June 27, 2017; Stats 2017 ch 299 § 3 (AB 1418), effective January 1, 2018; Stats 2017 ch 333 § 1.5 (SB 420), effective January 1, 2018; Stats 2017 ch 680 § 7.3 (SB 393), effective January 1, 2018 (ch 680 prevails); Stats 2018 ch 92 § 168 (SB 1289), effective January 1, 2019; Stats 2018 ch 965 § 1 (AB 2133), effective January 1, 2019 (ch 965 prevails); Stats 2019 ch 578 § 9 (AB 1076), effective January 1, 2020; Stats 2020 ch 29 § 20 (SB 118), effective August 6, 2020; Stats 2020 ch 191 § 1 (SB 905), effective January 1, 2021; Stats 2021 ch 411 § 5 (AB 483), effective January 1, 2022; Stats 2021 ch 434 § 18 (SB 827), effective January 1, 2022 (ch 411 prevails).

§ 11105.2. Notification of Subsequent Arrest or Disposition.

(a)

(1) The Department of Justice shall provide to the State Department of Social Services, the Medical Board of California, and the Osteopathic Medical Board of California, pursuant to state or federal law authorizing those departments to receive state or federal summary criminal history information, and may provide to any other entity authorized by state or federal law to receive state or federal summary criminal history information, subsequent state or federal arrest or disposition notification to assist in fulfilling employment, licensing, or certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the Department of Justice or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval. This section does not authorize the notification of a subsequent disposition pertaining to a disposition that does not result in a conviction, unless the department has previously received notification of the arrest and has previously lawfully notified a receiving entity of the pending status of that arrest. If the department supplies subsequent arrest or disposition notification to a receiving entity, the entity shall, at the same time, expeditiously furnish a copy of the information to the person to whom it relates if the information is a basis for an adverse employment, licensing, or certification decision. If the copy is not furnished in person, the copy shall be delivered to the last contact information provided by the applicant.

(2) An entity that submits the fingerprints of applicants for licensing, employment, or certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions pursuant to paragraph (1) shall comply with subdivision (d).

(b) For purposes of this section, "approval" means those duties described in subdivision (d) of Section 309 of the Welfare and Institutions Code for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court, and those duties in Section 16519.5 of the Welfare and Institutions Code for resource families.

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

(d) An entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated. The Department of Justice shall terminate state or federal subsequent notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) An entity that receives a notification of a state or federal subsequent arrest or disposition for a person unknown to the entity, or for a person no longer employed by the entity, or no longer eligible to renew the certificate or license for which subsequent notification service was established shall immediately return the subsequent notification to the Department of Justice, informing the department that the entity is no longer interested in the applicant. The entity shall not record or otherwise retain any information received as a result of the subsequent notice.

(f) An entity that submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department or the Federal Bureau of Investigation to receive notification of subsequent arrest or disposition shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

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

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

Leg.H.

Added Stats 1981 ch 269 § 2. Amended Stats 1986 ch 937 § 1; Stats 1987 ch 56 § 138; Stats 1998 ch 606 § 10 (SB 1880); Stats 2001 ch 653 § 6 (AB 1695), effective October 10, 2001; Stats 2012 ch 256 § 3 (AB 2343), effective January 1, 2013; Stats 2015 ch 773 § 43 (AB 403), effective January 1, 2016; Stats 2018 ch 300 § 1 (AB 2461), effective January 1, 2019.

§ 11105.03. Request for records by human resource agency or employer; Federal level criminal offender record information; Notice to parents or guardian of minor when prospective employee or volunteer has conviction for specified offenses; Confidentiality; Request for records or arrest notification by community youth athletic program; Liability.

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which they would have supervisory or disciplinary power over a minor or any person under their care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) A request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The department shall not require the applicant's residence address for any request for records pursuant to subdivision (a). The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, a fee shall not be charged to a nonprofit organization. Requests received by the department for federal level criminal offender record information shall be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.

(c)

(1) When a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 273a, 273d, or 273.5, former Section 262, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins their duties or tasks. Notwithstanding any other law, a person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for conveying or receiving that information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction. This paragraph does not preclude an employer from requesting records of misdemeanor convictions from the Department of Justice pursuant to this section.

(d) This section does not supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code, and Section 16519.5 of the Welfare and Institutions Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, “employer” means any nonprofit corporation or other organization specified by the Attorney General that employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, “human resource agency” means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), criminal history information obtained pursuant to this section is confidential and a recipient shall not disclose its contents other than for the purpose for which it was acquired.

(i) As used in this subdivision, "community youth athletic program" means an employer having as its primary purpose the promotion or provision of athletic activities for youth under 18 years of age.

(j)

(1) A community youth athletic program may request state and federal level criminal history information pursuant to subdivision (a) for a volunteer coach or hired coach candidate. The director of the community youth athletic program shall be the custodian of records.

(2) The community youth athletic program may request from the Department of Justice subsequent arrest notification service, as provided in Section 11105.2, for a volunteer coach or a hired coach candidate.

(3) As used in this subdivision, "community youth athletic program" means an employer having as its primary purpose the promotion or provision of athletic activities for youth under 18 years of age.

(k) Compliance with this section does not remove or limit the liability of a mandated reporter pursuant to Section 11166.

Leg.H.

Added Stats 1981 ch 681 § 2 as § 11105.2. Amended and renumbered by Stats 1984 ch 144 § 163 (ch 714 prevails), ch 714 § 1; Amended Stats 1985 ch 1012 § 1, ch 1396 § 2; Stats 1987 ch 1418 § 8; Stats 1990 ch 1570 § 3 (AB 2617); Stats 1991 ch 937 § 5 (AB 1797); Stats 1992 ch 163 § 111 (AB 2641), operative January 1, 1994 (ch 1227 prevails), ch 1227 § 1 (AB 3773); Stats 1993 ch 219 § 220 (AB 1500), ch 610 § 25 (AB 6), effective September 30, 1993, ch 611 § 28 (SB 60), effective September 30, 1993; Stats 1994 ch 1263 § 5 (AB 1328), ch 1264 § 1 (AB 3738), ch 1269 § 61.3 (AB 2208); Stats 1997 ch 586 § 1 (SB 1302); Stats 2000 ch 972 § 1 (AB 2665); Stats 2002 ch 627 § 4 (SB 900), ch 990 § 1.5 (AB 1855); Stats 2003 ch 124 § 1 (SB 873); Stats 2004 ch 184 § 2 (SB 1314), effective July 23, 2004; Stats 2013 ch 146 § 1 (AB 465), effective January 1, 2014; Stats 2015 ch 773 § 44 (AB 403), effective January 1, 2016; Stats 2020 ch 191 § 2 (SB 905), effective January 1, 2021; Stats 2021 ch 626 § 62 (AB 1171), effective January 1, 2022.

§ 11105.04. Information From and to Designated Court Appointed Special Advocate Program; Fee.

(a) A designated Court Appointed Special Advocate (CASA) program may submit to the Department of Justice fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information as to the existence and nature of any record of child abuse investigations contained in the Child Abuse Central Index,state- or federal-level convictions, or state- or federal-level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal-level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(b) When requesting state-level criminal offender record information pursuant to this section, the designated CASA program shall request subsequent arrest notification, pursuant to Section 11105.2, for all employment and volunteer candidates.

(c) The department shall respond to the designated CASA program with information as delineated in subdivision (p) of Section 11105.

(d)

(1) The department shall charge a fee sufficient to cover the cost of processing the requests for federal-level criminal offender record information.

(2) The department shall not charge a fee for state-level criminal offender record information.

(e) For purposes of this section, a designated CASA program is a local court-appointed special advocate program that has adopted and adheres to the guidelines established by the Judicial Council and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best interests of children in juvenile court dependency and wardship proceedings. For purposes of this section, there shall be only one designated CASA program in each California county.

Leg.H.

Added Stats 2003 ch 365 § 5 (AB 1710), operative July 1, 2004. Amended Stats 2007 ch 160 § 1 (AB 369), effective January 1, 2008; Stats 2016 ch 860 § 1 (AB 2417), effective January 1, 2017. Stats 2017 ch 561 § 192 (AB 1516), effective January 1, 2018.

§ 11105.2. Notification of Subsequent Arrest or Disposition

(a) The Department of Justice may provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the Department of Justice or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval. Nothing in this section shall authorize the notification of a subsequent disposition pertaining to a disposition that does not result in a conviction, unless the department has previously received notification of the arrest and has previously lawfully notified a receiving entity of the pending status of that arrest. When the department supplies subsequent arrest or disposition notification to a receiving entity, the entity shall, at the same time, expeditiously furnish a copy of the information to the person to whom it relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(b) For purposes of this section, "approval" means those duties described in subdivision (d) of Section 309 of the Welfare and Institutions Code for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court, and those duties in Section 16519.5 of the Welfare and Institutions Code for resource families.

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

(d) Any entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated. The Department of Justice shall terminate state or federal subsequent notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) Any entity that receives a notification of a state or federal subsequent arrest or disposition for a person unknown to the entity, or for a person no longer employed by the entity, or no longer eligible to renew the certificate or license for which subsequent notification service was established shall immediately return the subsequent notification to the Department of Justice, informing the department that the entity is no longer interested in the applicant. The entity shall not record or otherwise retain any information received as a result of the subsequent notice.

(f) Any entity that submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department or the Federal Bureau of Investigation to receive notification of subsequent arrest or disposition shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

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

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

Leg.H.

Added Stats 1981 ch 269 § 2. Amended Stats 1986 ch 937 § 1; Stats 1987 ch 56 § 138; Stats 1998 ch 606 § 10 (SB 1880); Stats 2001 ch 653 § 6 (AB 1695), effective October 10, 2001; Stats 2012 ch 256 § 3 (AB 2343), effective January 1, 2013; Stats 2015 ch 773 § 43 (AB 403), effective January 1, 2016.

§ 11105.3. Request for Records by Human Resource Agency or Employer; Federal Level Criminal Offender Record Information; Notice to Parents or Guardian of Minor When Prospective Employee or Volunteer Has Conviction for Specified Offenses; Confidentiality; Request for Records or Arrest Notification by Community Youth Athletic Program; Liability.

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. Requests received by the department for federal level criminal offender record information shall be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.

(c)

(1) When a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other law, any person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code, and Section 16519.5 of the Welfare and Institutions Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, "employer" means any nonprofit corporation or other organization specified by the Attorney General that employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(i) As used in this subdivision, "community youth athletic program" means an employer having as its primary purpose the promotion or provision of athletic activities for youth under 18 years of age.

(j) A community youth athletic program, as defined in subdivision (i), may request state and federal level criminal history information pursuant to subdivision (a) for a volunteer coach or hired coach candidate. The director of the community youth athletic program shall be the custodian of records.

(k) The community youth athletic program may request from the Department of Justice subsequent arrest notification service, as provided in Section 11105.2, for a volunteer coach or a hired coach candidate.

(l) Compliance with this section does not remove or limit the liability of a mandated reporter pursuant to Section 11166.

Leg.H.

Added Stats 1981 ch 681 § 2 as § 11105.2. Amended and renumbered by Stats 1984 ch 144 § 163 (ch 714 prevails), ch 714 § 1. Amended Stats 1985 ch 1012 § 1, ch 1396 § 2; Stats 1987 ch 1418 § 8; Stats 1990 ch 1570 § 3 (AB 2617); Stats 1991 ch 937 § 5 (AB 1797); Stats 1992 ch 163 § 111 (AB 2641), operative January 1, 1994 (ch 1227 prevails), ch 1227 § 1 (AB 3773); Stats 1993 ch 219 § 220 (AB 1500), ch 610 § 25 (AB 6), effective September 30, 1993, ch 611 § 28 (SB 60), effective September 30, 1993; Stats 1994 ch 1263 § 5 (AB 1328), ch 1264 § 1 (AB 3738), ch 1269 § 61.3 (AB 2208); Stats 1997 ch 586 § 1 (SB 1302); Stats 2000 ch 972 § 1 (AB 2665); Stats 2002 ch 627 § 4 (SB 900), ch 990 § 1.5 (AB 1855); Stats 2003 ch 124 § 1 (SB 873); Stats 2004 ch 184 § 2 (SB 1314), effective July 23, 2004; Stats 2013 ch 146 § 1 (AB 465), effective January 1, 2014; Stats 2015 ch 773 § 44 (AB 403), effective January 1, 2016.

§ 11105.5. Notice that Record is Sealed.

When the Department of Justice receives a report that the record of a person has been sealed under Section 851.7, 851.8, or 1203.45, it shall send notice of that fact to all officers and agencies that it had previously notified of the arrest or other proceedings against the person.

Leg.H.

1965 ch. 1910, 1967 ch. 1373, 1975 ch. 904, 1985 ch. 106.

CHAPTER 2

CONTROL OF CRIMES AND CRIMINALS

ARTICLE 2.5

Child Abuse and Neglect Reporting Act

§ 11165. "Child" Defined.

As used in this article "child" means a person under the age of 18 years.

Leg.H.

1987 ch. 1459 § 2.

§ 11165.1. "Sexual Abuse," "Sexual Assault," "Sexual Exploitation" Defined.

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), Section 287 or former Section 288a (oral copulation), subdivision (a) or (b) of, or paragraph (1) of subdivision (c) of, Section 288 (lewd or lascivious acts upon a child), Section 289 (sexual penetration), or Section 647.6 (child molestation). "Sexual assault" for the purposes of this article does not include voluntary conduct in violation of Section 286, 287, or 289, or former Section 288a, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(d) "Commercial sexual exploitation" refers to either of the following:

(1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.

(2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

Leg.H.

Added Stats 1987 ch 1459 § 5. Amended Stats 1997 ch 83 § 1 (AB 327); Stats 2000 ch 287 § 21 (SB 1955); Stats 2014 ch 264 § 1 (AB 1775), effective January 1, 2015; Stats 2015 ch 425 § 3 (SB 794), effective January 1, 2016; Stats 2018 ch 423 § 112 (SB 1494), effective January 1, 2019; Stats 2020 ch 180 § 1 (AB 1145), effective January 1, 2021.

§ 11165.2. "Neglect," "Severe Neglect," "General Neglect" Defined.

As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

Leg.H.

1987 ch. 1459 § 7.

§ 11165.3. "Willful Harming or Injuring of a Child or the Endangering of the Person or Health of a Child" Defined.

As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Leg.H.

1987 ch. 1459 § 9, 2004 ch. 842 (SB 1313).

§ 11165.4. "Unlawful Corporal Punishment or Injury" Defined.

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic

condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Leg.H.

1987 ch. 1459, 1988 ch. 39, 1993 ch. 346.

§ 11165.5. "Abuse or Neglect in Out-of-Home Care."

As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Leg.H.

Added Stats 1987 ch 1459 § 12. Amended Stats 1988 ch 39 § 2. Amended Stats 1993 ch 346 § 2 (AB 331); Stats 2000 ch 916 § 2 (AB 1241); Stats 2001 ch 133 § 1 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 3 (SB 1313); Stats 2007 ch 393 § 1 (AB 673), effective January 1, 2008.

§ 11165.6. "Child Abuse or Neglect."

As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Leg.H.

Added Stats 2000 ch 916 § 4 (AB 1241). Amended Stats 2001 ch 133 § 2 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 4 (SB 1313); Stats 2007 ch 393 § 2 (AB 673), effective January 1, 2008.

§ 11165.7. "Mandated Reporter"; Training.

(a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.

(9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child daycare facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a childcare institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed associate marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) An associate professional clinical counselor registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43)

(A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.

(45) An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.

(46) An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.

(47) A qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional, as defined in Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(48) A human resource employee of a business subject to Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code that employs minors. For purposes of this section, a "human resource employee" is the employee or employees designated by the employer to accept any complaints of misconduct as required by Chapter 6 (commencing with Section 12940) of Part 2.8 of Division 3 of Title 2 of the Government Code.

(49) An adult person whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business subject to Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code is a mandated reporter of sexual abuse, as defined in Section 11165.1. Nothing in this paragraph shall be construed to modify or limit the person's duty to report known or suspected child abuse or neglect when the person is acting in some other capacity that would otherwise make the person a mandated reporter.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c)

(1) Except as provided in subdivision (d) and paragraph (2), employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(2) Employers subject to paragraphs (48) and (49) of subdivision (a) shall provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. The training requirement may be met by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services.

(d) Pursuant to Section 44691 of the Education Code, school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools shall annually train their employees and persons working on their behalf specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(e)

(1) On and after January 1, 2018, pursuant to Section 1596.8662 of the Health and Safety Code, a childcare licensee applicant shall take training in the duties of mandated reporters under the child abuse reporting laws as a condition of licensure, and a childcare administrator or an employee of a licensed child

daycare facility shall take training in the duties of mandated reporters during the first 90 days when that administrator or employee is employed by the facility.

(2) A person specified in paragraph (1) who becomes a licensee, administrator, or employee of a licensed child daycare facility shall take renewal mandated reporter training every two years following the date on which that person completed the initial mandated reporter training. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(f) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(g) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

Leg.H.

Added Stats 1987 ch 1459 § 14. Amended Stats 1991 ch 132 § 1 (AB 1133); Stats 1992 ch 459 § 1 (SB 1695); Stats 2000 ch 916 § 5 (AB 1241); Stats 2001 ch 133 § 3 (AB 102), effective July 31, 2001, ch 754 § 4 (AB 1697); Stats 2002 ch 927 § 10.7 (AB 3032), ch 936 § 1 (AB 299), effective September 27, 2002; Stats 2003 ch 122 § 1 (SB 316); Stats 2004 ch 762 § 1 (AB 2531), ch 842 § 5.5 (SB 1313); Stats 2006 ch 901 § 9.5 (SB 1422), effective January 1, 2007; Stats 2008 ch 456 § 1 (AB 2337), effective January 1, 2009; Stats 2011 ch 381 § 41 (SB 146), effective January 1, 2012; Stats 2012 ch 162 § 136 (SB 1171), effective January 1, 2013, ch 517 § 1 (AB 1713), effective January 1, 2013, ch 518 § 1 (SB 1264), effective January 1, 2013, ch 519 § 1 (AB 1434), effective January 1, 2013, ch 520 § 1 (AB 1435), effective January 1, 2013, ch 521 § 1.15 (AB 1817), effective January 1, 2013 (ch 521 prevails); Stats 2013 ch 76 § 164 (AB 383), effective January 1, 2014; Stats 2014 ch 797 § 4 (AB 1432), effective January 1, 2015; Stats 2015 ch 414 § 3 (AB 1207), effective January 1, 2016; Stats 2016 ch 612 § 57 (AB 1997), effective January 1, 2017; Stats 2016 ch 850 § 4.5 (AB 1001), effective January 1, 2017; Stats 2017 ch 573 § 77 (SB 800), effective January 1, 2018; Stats 2019 ch 674 § 1 (AB 189), effective January 1, 2020; Stats 2020 ch 243 § 1 (AB 1963), effective January 1, 2021.

§ 11165.9. Reports to Authorities.

Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

Leg.H.

Added Stats 2000 ch 916 § 8 (AB 1241). Amended Stats 2001 ch 133 § 4 (AB 102), effective July 31, 2001; Stats 2005 ch 713 § 2 (AB 776), effective January 1, 2006; Stats 2006 ch 701 § 2 (AB 525), effective January 1, 2007.

§ 11165.11. "Licensing Agency" Defined.

As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with

Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

Leg.H.

1987 ch. 1459.

§ 11165.12. Definitions Relating to Reports.

As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect as defined in Section 11165.6.

(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

Leg.H.

Added Stats 1987 ch 1459 § 19. Amended Stats 1990 ch 1330 § 1 (SB 2788); Stats 1997 ch 842 § 2 (SB 644); Stats 2000 ch 916 § 10 (AB 1241); Stats 2004 ch 842 § 6 (SB 1313); Stats 2011 ch 468 § 1 (AB 717), effective January 1, 2012.

§ 11165.13. Reporting Child Abuse or Neglect—Maternal Substance Abuse.

For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

Leg.H.

1990 ch. 1603, operative July 1, 1991, 1996 ch. 1023, effective September 29, 1996, 2000 ch. 916.

§ 11165.14. Investigation of Child Abuse Complaint against School Employee or Act Committed at Schoolsite.

The appropriate local law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

Leg.H.

1991 ch. 1102, 2000 ch. 916.

§ 11165.15. Required Reporting Abuse or Neglect.

For the purposes of this article, the fact that a child is homeless or is classified as an unaccompanied youth, as defined in Section 11434a of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), is not, in and of itself, a sufficient basis for reporting child abuse or neglect. This section shall not limit a mandated reporter, as defined in Section 11165.7, from making a report pursuant to Section 11166 whenever the mandated reporter has knowledge of or observes an unaccompanied minor whom the mandated reporter knows or reasonably suspects to be the victim of abuse or neglect.

Leg.H.

Added Stats 2013 ch 486 § 1 (AB 652), effective January 1, 2014. Amended Stats 2014 ch 71 § 132 (SB 1304), effective January 1, 2015.

§ 11166. Duty to Report; Mandated Reporters; Punishment for Violation.

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, the mandated reporter shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which the mandated reporter filed the report. A mandated reporter who files a one-time automated written report because the mandated reporter was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) This section does not supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals the mandated reporter's failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d)

(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of the clergy member's church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3)

(A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in the clergy member's professional capacity or within the scope of the clergy member's employment, other than during a

penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e)

(1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of that person's professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM,computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of the technician's professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM,computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or materials are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital,oral-genital,anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, the mandated reporter makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom the person knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in the person's private capacity and not in the person's professional capacity or within the scope of the person's employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i)

(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article. An internal policy shall not direct an employee to allow the employee's supervisor to file or process a mandated report under any circumstances.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose the employee's identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j)

(1) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(2) A county probation or welfare department shall immediately, and in no case in more than 24 hours, report to the law enforcement agency having jurisdiction over the case after receiving information that a child or youth who is receiving child welfare services has been identified as the victim of commercial sexual exploitation, as defined in subdivision (d) of Section 11165.1.

(3) When a child or youth who is receiving child welfare services and who is reasonably believed to be the victim of, or is at risk of being the victim of, commercial sexual exploitation, as defined in Section 11165.1, is missing or has been abducted, the county probation or welfare department shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

Leg.H.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 2, effective September 12, 1981; Stats 1982 ch 905 § § 2; Stats 1984 ch 1423 § 9, effective September 26, 1984; Stats 1986 ch 1289 § 2; Stats 1987 ch 1459 § 20; Stats 1988 ch 269 § 1, ch 1580 § 2; Stats 1990 ch 1603 § 3 (SB 2669), operative July 1, 1991; Stats 1992 ch 459 § 3 (SB 1695); Stats 1993 ch 510 § 1.5 (SB 665); Stats 1996 ch 1080 § 10 (AB 295), ch 1081 § 3.5 (AB 3354); Stats 2000 ch 916 § 16 (AB 1241); Stats 2001 ch 133 § 5 (AB 102), effective July 31, 2001; Stats 2002 ch 936 § 2 (AB 299), effective September 27, 2002; Stats 2004 ch 823 § 17 (AB 20), ch 842 § 7.5 (SB 1313); Stats 2005 ch 42 § 1 (AB 299), ch 713 § 3 (AB 776), effective January 1, 2006; Stats 2006 ch 701 § 3 (AB 525), effective January 1, 2007; Stats 2007 ch 393 § 3 (AB 673), effective January 1, 2008; Stats 2010 ch 123 § 1 (AB 2380), effective January 1, 2011; Stats 2012 ch 517 § 2 (AB 1713), effective January 1, 2013, ch 521 § 2.5 (AB 1817), effective January 1, 2013 (ch 521 prevails), ch 728 § 131 (SB 71), effective January 1, 2013; Stats 2013 ch 76 § 165 (AB 383), effective January 1, 2014; Stats 2015 ch 425 § 4 (SB 794), effective January 1, 2016; Stats 2016 ch 850 § 5 (AB 1001), effective January 1, 2017; Stats 2019 ch 27 § 16 (SB 80), effective June 27, 2019.

§ 11166.01. Punishment for Violation of § 11166; Failure to Report Resulting in Death or Great Bodily Injury.

(a) Except as provided in subdivision (b), any supervisor or administrator who violates paragraph (1) of subdivision (i) of Section 11166 shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Notwithstanding Section 11162 or subdivision (c) of Section 11166, any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, in violation of this article, where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

Leg.H.

Added Stats 2002 ch 858 § 1 (AB 2672). Amended Stats 2004 ch 842 § 8 (SB 1313); Stats 2005 ch 163 § 1 (AB 1188), effective January 1, 2006; Stats 2006 ch 901 § 10 (SB 1422), effective January 1, 2007.

§ 11166.05. Child with Serious Emotional Damage—Report to Agency.

Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

Leg.H.

2001 ch. 133, effective July 31, 2001, 2004 ch. 842 (SB 1313).

§ 11166.1. Report of Child Abuse or Neglect—Notification of Licensing Office within 24 Hours; Report by Protective Agency Employee Regarding Suspected Child Abuse or Neglect.

(a)

(1) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(A) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(B) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

(2) The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in their professional capacity or within the scope of their employment, a child in protective custody whom the employee knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

(c)

(1) When an agency receives a report pursuant to Section 11166 alleging abuse or neglect of the child of a minor parent or a nonminor dependent parent, the agency shall, within 36 hours, provide notice of the report to the attorney who represents the minor parent or nonminor dependent in dependency court.

(2) For purposes of this subdivision, "minor parent" and "nonminor dependent parent" have the same meaning as in Section 16002.5 of the Welfare and Institutions Code.

Leg.H.

Added Stats 1985 ch 1593 § 3, effective October 2, 1985. Amended and renumbered Stats 1987 ch 56 § 141 (ch 531 prevails); Amended Stats 1987 ch 531 § 4; Stats 1992 ch 844 § 1 (AB 3633); Stats 1998 ch 900 § 1 (AB 2316); Stats 2000 ch 916 § 17 (AB 1241); Stats 2021 ch 585 § 1 (AB 670), effective January 1, 2022.

§ 11166.2. Abuse Occurring in or Involving Staff of Child Day Care Facility—Immediate Report by Phone, Fax or Electronic Transmission to Licensing Agency.

In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

Leg.H.

1985 ch. 1598, 1987 ch. 531, 1988 ch. 269, 1990 ch. 650, 2000 ch. 916, 2001 ch. 133, effective July 31, 2001.

§ 11166.3. Communication Between Law Enforcement Agencies and County Welfare or Probation Departments Investigating Child Abuse or Neglect Cases.

(a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

Leg.H.

1985 ch. 1262, 1986 ch. 1122 (amended and renumbered from § 11166.1), 1987 ch. 531 § 3, 1988 ch. 898 § 1, 2000 chs. 135, 916, 2001 ch. 133, effective July 31, 2001.

§ 11166.5. Statement Acknowledging Awareness of Reporting Duties and Promising Compliance; Exemptions; Distribution in

Connection with Licensure or Certification.

(a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

Leg.H.

Added Stats 1984 ch 1718 § 1. Amended Stats 1985 ch 464 § 1; Stats 1985 ch 1598 § 5.1; Stats 1986 ch 248 § 168; Stats 1987 ch 1459 § 21; Stats 1990 ch 931 § 1 (AB 3521); Stats 1991 ch 132 § 2 (AB 1133); Stats 1992 ch 459 § 4 (SB 1695); Stats 1993 ch 510 § 2 (SB 665); Stats 1996 ch 1081 § 4 (AB 3354); Stats 2000 ch 916 § 20 (AB 1241); Stats 2001 ch 133 § 9 (AB 102), effective July 31, 2001; Stats 2004 ch 762 § 2 (AB 2531), ch 842 § 10.5 (SB 1313); Stats 2012 ch 518 § 2 (SB 1264), effective January 1, 2013.

§ 11167. Required Information; Confidentiality of Reporter's Identity; Advising Individual of Complaint or Allegations.

(a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect and information relevant to a report made pursuant to Section 11166.05 may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, and information relevant to a report made pursuant to Section 11166.05 may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d)

(1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

Leg.H.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 3, effective September 12, 1981; Stats 1982 ch 162 § 2, effective April 26, 1982; Stats 1984 ch 144 § 164; Stats 1985 ch 1598 § 6; Stats 1986 ch 1289 § 3; Stats 1987 ch 531 § 6; Stats 1992 ch 163 § 112 (AB 2641), operative January 1, 1994 (ch 316 prevails), ch 316 § 2 (AB 3491); Stats 1993 ch 219 § 221 (AB 1500); Stats 1997 ch 324 § 8 (SB 871); Stats 2000 ch 916 § 24 (AB 1241); Stats 2001 ch 133 § 13 (AB 102), effective July 31, 2001; Stats 2004 ch 292 § 1 (AB 2749), ch 842 § 15.5 (SB 1313); Stats 2005 ch 279 § 17 (SB 1107), effective January 1, 2006; Stats 2006 ch 701 § 4 (AB 525) (ch 701 prevails), effective January 1, 2007, ch 901 § 10.5 (SB 1422), effective January 1, 2007; Stats 2010 ch 95 § 1 (AB 2339), effective January 1, 2011.

§ 11167.5. Confidentiality and Disclosure of Reports.

(a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a license to operate a community care facility or child daycare facility, or for a certificate of approval to operate a certified family home or resource family home, or for employment or presence in a licensed facility, certified family home, or resource family home, or when a complaint alleges child abuse or neglect by a licensee or employee of, or individual approved to be present in, a licensed facility, certified family home, or resource family home.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a post mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or the chairperson's designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

Leg.H.

Added Stats 1983 ch 1082 § 1. Amended Stats 1985 ch 1593 § 4, effective October 2, 1985, ch 1598 § 7.5; Stats 1987 ch 167 § 1, ch 1459 § 22; Stats 1988 ch 1580 § 5; Stats 1989 ch 153 § 1, ch 1169 § 2; Stats 1995 ch 391 § 1 (AB 1440); Stats 1997 ch 24 § 1 (AB 1536), ch 842 § 4 (SB 644), ch 844 § 1.5 (AB 1065); Stats 1998 ch 485 § 135 (AB 2803); Stats 2000 ch 916 § 25 (AB 1241); Stats 2002 ch 187 § 2 (SB 1745); Stats 2004 ch 842 § 16 (SB 1313); Stats 2006 ch 701 § 5 (AB 525), effective January 1, 2007; Stats 2007 ch 583 § 18 (SB 703),

effective January 1, 2008; Stats 2008 ch 699 § 17 (SB 1241), effective January 1, 2009, ch 701 § 9 (AB 2651) (ch 701 prevails), effective September 30, 2008; Stats 2017 ch 732 § 41 (AB 404), effective January 1, 2018; Stats 2021 ch 615 § 346 (AB 474), effective January 1, 2022.

§ 11168. Written Reports; Forms Distributed by Agencies.

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

Leg.H.

1980 ch. 1071, 2000 ch. 916.

§ 11169. Forwarding of Reports to Department of Justice.

(a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.

(c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI). The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) Any person listed in the CACI as of January 1, 2013, who was listed prior to reaching 18 years of age, and who is listed once in CACI with no subsequent listings, shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing.

(h) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

(i) Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(j) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

Leg.H.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 4, effective September 12, 1981; Stats 1985 ch 1598 § 8; Stats 1988 ch 269 § 4, ch 1497 § 1; Stats 1997 ch 842 § 5 (SB 644); Stats 2000 ch 916 § 27 (AB 1241); Stats 2001 ch 133 § 14 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 17 (SB 1313); Stats 2011 ch 468 § 2 (AB 717), effective January 1, 2012; Stats 2012 ch 848 § 1 (AB 1707), effective January 1, 2013.

§ 11170. Child Abuse Central Index; Notifications; Availability of Information; Future Deletion of Information for Persons Under 18; Placement of Child; Out of State Law Enforcement Agencies; Fee; Request to Determine Presence in Index; Removal of Victims' Names.

(a)

(1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be not substantiated. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index (CACI) pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the CACI accurately reflects the report it receives from the submitting agency.

(3) Only information from reports that are reported as substantiated shall be filed pursuant to paragraph (1), and all other determinations shall be removed from the central list. If a person listed in the CACI was under 18 years of age at the time of the report, the information shall be deleted from the CACI

10 years from the date of the incident resulting in the CACI listing, if no subsequent report concerning the same person is received during that time period.

(b) The provisions of subdivision (c) of Section 11169 apply to any information provided pursuant to this subdivision.

(1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, Child Abuse Prevention and Treatment Act guardian ad litem appointed under Rule 5.662 of the California Rules of Court, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make relevant information from the CACI available to a law enforcement agency, county welfare department, tribal agency pursuant to Section 10553.12 of the Welfare and Institutions Code, or county probation department that is conducting a child abuse investigation.

(4) The department shall make available to the State Department of Social Services, to any county licensing agency that has contracted with the state for the performance of licensing duties, to a county approving resource families pursuant to Section 16519.5 of the Welfare and Institutions Code, or to a tribal court or tribal child welfare agency of a tribe, consortium of tribes, or tribal organization that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or approval, or any adult who resides or is employed in the home of an applicant for licensure or approval, or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code, or Section 11403.2 or 16519.5 of the Welfare and Institutions Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information for investigative purposes only that is maintained in the CACI pursuant to subdivision (a) relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the CACI from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the CACI that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) Pursuant to Section 10553.12 of the Welfare and Institutions Code, the department shall make available to a tribal agency information regarding a known or suspected child abuser maintained pursuant to this section or subdivision (a) of Section 11169 who is being considered as a prospective foster or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, any person who has a familial or intimate relationship with any person living in the home of an applicant, or an employee of the tribal agency who may have contact with children.

(9) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(10) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(11)

(A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate (CASA) program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (9), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (10), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If CACI information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(12)

(A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), (9), or (10), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than those described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c)

(1) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the CACI that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

(2) If information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e)

(1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subsection (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3)

(A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (12) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f)

(1) Any person may determine if he or she is listed in the CACI by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1).

(g) If a person is listed in the CACI only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

Leg.H.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 5, effective September 12, 1981; Stats 1982 ch 162 § 3, effective April 26, 1982; Stats 1984 ch 1613 § 3, effective September 30, 1984; Stats 1985 ch 1598 § 8.5; Stats 1986 ch 1496 § 3; Stats 1987 ch 82 § 4, effective June 30, 1987; Stats 1989 ch 153 § 2; Stats 1990 ch 1330 § 2 (SB 2788), ch 1363 § 15.7 (AB 3532), operative July 1, 1991; Stats 1992 ch 163 § 113 (AB 2641), operative January 1, 1994 (ch 1338 prevails), ch 1338 § 2 (SB 1184); Stats 1993 ch 219 § 221.1 (AB 1500); Stats 1996 ch 1081 § 5 (AB 3354); Stats 1997 ch 842 § 6 (SB 644), ch 843 § 5 (AB 753), ch 844 § 2.5 (AB 1065); Stats 1999 ch 475 § 8 (SB 654); Stats 2000 ch 916 § 28 (AB 1241); Stats 2001 ch 133 § 15 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 18 (SB 1313); Stats 2005 ch 279 § 18 (SB 1107), effective January 1, 2006; Stats 2006 ch 701 § 6 (AB 525), effective January 1, 2007; Stats 2007 ch 160 § 2 (AB 369), effective January 1, 2008, ch 583 § 19.5 (SB 703), effective January 1, 2008; Stats 2008 ch 553 § 1 (AB 2618), effective January 1, 2009, ch 701 § 10 (AB 2651), effective September 30, 2008, operative until January 1, 2009, § 10.2 (AB 2651), effective September 30, 2008, operative January 1, 2009; Stats 2009 ch 91 § 1 (AB 247), effective January 1, 2010; Stats 2010 ch 328 § 178 (SB 1330), effective January 1, 2011; Stats 2011 ch 459 § 4.3 (AB 212), effective October 4, 2011, ch 468 § 3.5 (AB 717), effective January 1, 2012; Stats 2012 ch 846 § 6 (AB 1712), effective January 1, 2013, ch 848 § 2.5 (AB 1707), effective January 1, 2013; Stats 2014 ch 772 § 7 (SB 1460), effective January 1, 2015; Stats 2015 ch 773 § 45 (AB 403), effective January 1, 2016; Stats 2017 ch 732 § 42 (AB 404), effective January 1, 2018.

§ 11170.5. Availability of Child Abuse Central Index Information to Adoption Agencies—Fee.

(a) Notwithstanding paragraph (4) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, information regarding a known or suspected child abuser maintained in the Child Abuse Central Index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.

(b) A licensed adoption agency, to which disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating an application for adoption.

(c) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to subparagraph (C) of paragraph (9) of subdivision (b) of Section 11170.

Leg.H.

1993 ch. 491, 1997 ch. 842, 2004 ch. 842 (SB 1313).

§ 11171. Medical Forensic Forms, Instructions, and Examination Protocols for Victims of Child Abuse or Neglect.

(a)

(1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The Office of Emergency Services shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs' Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.

(c) The forms shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the Office of Emergency Services and subject to the confidentiality laws pertaining to the release of medical forensic examination records.

(e) The forms shall be made accessible for use on the Internet.

Leg.H.

Added Stats 2002 ch 249 § 4 (SB 580). Amended Stats 2003 ch 62 § 235 (SB 600), ch 229 § 18 (AB 1757) (ch 229 prevails), ch 468 § 20 (SB 851); Stats 2004 ch 183 § 274 (AB 3082), ch 405 § 18 (SB 1796) (ch 405 prevails); Stats 2010 ch 618 § 209 (AB 2791), effective

January 1, 2011; Stats 2013 ch 352 § 421 (AB 1317), effective September 26, 2013, operative July 1, 2013.

§ 11171.2. Health Practitioner's Right to Take X-rays; Physician-Patient Privilege.

(a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

Leg.H.

1980 ch. 1071, 2000 ch. 916. 2002 ch. 249 (SB 580) § 3 (renumbered from § 11171).

§ 11171.5. Order Directing X-ray Without Parental Consent; Reimbursement of Cost.

(a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent.

Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.

(c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

Leg.H.

1985 ch. 317, 2000 ch. 916.

§ 11172. Liability of Person Making Report; Reimbursement by State of Attorney Fees Incurred in Defending Action.

(a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of their professional capacity or outside the scope of their employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at their direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for

disseminating the photographs, images, or material with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) Any commercial computer technician, and any employer of any commercial computer technician, who, pursuant to a warrant from a law enforcement agency investigating a report of suspected child abuse or neglect, provides the law enforcement agency with a computer or computer component which contains possible evidence of a known or suspected instance of child abuse or neglect, shall not incur civil or criminal liability as a result of providing that computer or computer component to the law enforcement agency.

(d) Any person who, in good faith, provides information or assistance, including medical evaluations or consultations, to an agency specified in Section 11165.9, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect under this article, shall not incur civil or criminal liability as a result of providing that information or assistance. This subdivision does not grant immunity from liability for an individual who is suspected of committing abuse or neglect of the child who is the subject of the report.

(e)

(1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the Department of General Services for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if they prevail in the action. The Department of General Services shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(f) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

Leg.H.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 135 § 1, effective July 1, 1981, ch 435 § 6, effective September 12, 1981; Stats 1984 ch 1170 § 2, ch 1703 § 2, ch 1718 § 3; Stats 1985 ch 1598 § 9; Stats 1986 ch 553 § 1; Stats 1987 ch 1459 § 23; Stats 1992 ch 459 § 5 (SB 1695); Stats 1993 ch 510 § 3 (SB 665); Stats 1996 ch 1081 § 6 (AB 3354); Stats 2000 ch 916 § 31 (AB 1241); Stats 2001 ch 133 § 16 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 21 (SB 1313); Stats 2006 ch 538 § 525 (SB 1852), effective January 1, 2007; Stats 2012 ch 521 § 3 (AB 1817), effective January 1, 2013; Stats 2016 ch 31 § 257 (SB 836), effective June 27, 2017; Stats 2019 ch 777 § 17 (AB 819), effective January 1, 2020.

§ 11174. Guidelines for Investigation of Child Abuse.

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

Leg.H.

1980 ch. 1071, 1981 ch. 435, effective September 12, 1981, 1982 ch. 162, effective April 26, 1982, 1985 ch. 1528, 1988 ch. 269.

§ 11174.1. Guidelines for Investigation of Child Abuse or Neglect in Licensed Facilities.

(a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

Leg.H.

1985 ch. 1593, effective October 2, 1985, 1988 ch. 269, 1989 ch. 1053, effective September 29, 1989, 2000 ch. 916.

§ 11174.3. Interview of Suspected Child Abuse or Neglect Victim on School Premises.

(a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the

interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Leg.H.

1987 ch. 640, 1998 ch. 311, effective August 19, 1998, 2000 ch. 916.

ARTICLE 2.6

Child Death Review Teams

§ 11174.32. Interagency Child Death Teams; Autopsy Protocols; Records Exempt from Disclosure; Report.

(a) Each county may establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death review teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death review team and an autopsy protocol, each county, working in consultation with local members of the California State Coroners Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

(d) Records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team.

(e) Written and oral information pertaining to the child's death as requested by a child death review team may be disclosed to a child death review team established pursuant to this section. The team may make a request, in writing, for the information sought and any person with information of the kind described in paragraph (2) may rely on the request in determining whether information may be disclosed to the team.

(1) An individual or agency that has information governed by this subdivision shall not be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information, unless disclosure is prohibited by federal law.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 11167.5, information from child abuse reports and investigations, except the identity of the person making the report, which shall not be disclosed.

(D) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11105, 11075, and 13300, respectively.

(E) Notwithstanding Section 11163.2, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct.

(F) Notwithstanding Section 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) Written or oral information disclosed to a child death review team pursuant to this subdivision shall remain confidential, and shall not be subject to disclosure or discovery by a third party unless otherwise required by law.

(f)

(1) No less than once each year, each child death review team shall make available to the public findings, conclusions, and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths.

(2) In its report, the child death review team shall withhold the last name of the child that is subject to a review or the name of the deceased child's siblings unless the name has been publicly disclosed or is

required to be disclosed by state law, federal law, or court order.

Leg.H.

Added Stats 1988 ch 1580 § 3, as Pen C § 11166.7. Amended Stats 2000 ch 916 § 21 (AB 1241); Stats 2001 ch 133 § 10 (AB 102), effective July 31, 2001; Amended and renumbered by Stats 2004 ch 842 § 11 (SB 1313); Amended Stats 2006 ch 813 § 1 (SB 1668), effective January 1, 2007; Stats 2016 ch 297 § 1 (AB 2083), effective January 1, 2017. Stats 2017 ch 561 § 195 (AB 1516), effective January 1, 2018.

§ 11174.33. Protocol for Development and Implementation of Interagency Child Death Teams.

Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

Leg.H.

1988 ch. 1580, 2000 ch. 916, 2004 ch. 842 (SB 1313) (renumbered from § 11166.8).

§ 11174.34. Coordination of State and Local Efforts to Address Fatal Child Abuse or Neglect; Statewide Tracking and Monitoring System; Review Team Directory; Training; Cross-Reporting.

(a)

(1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse- or neglect-related fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse- or neglect-related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b)

(1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Care Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators

Association, the Office of Emergency Services, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the Office of Emergency Services, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse or neglect.

(e) The State Department of Public Health, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State

Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Public Health in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Public Health.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The Office of Emergency Services, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse or neglect, and address relevant issues such as grief and mourning, data collection, training for medical personnel in the identification of child abuse or neglect fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the agency can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(l) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be

related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

Leg.H.

Added Stats 1992 ch 844 § 2 (AB 3633), as Pen C § 11166.9. Amended Stats 1995 ch 539 § 1 (AB 653); Stats 1997 ch 842 § 3 (SB 644); Stats 1999 ch 1012 § 1 (SB 525); Stats 2000 ch 916 § 23 (AB 1241); Stats 2001 ch 133 § 11 (AB 102), effective July 31, 2001; Stats 2003 ch 229 § 17 (AB 1757). Renumbered by Stats 2004 ch 842 § 13 (SB 1313); Stats 2010 ch 618 § 210 (AB 2791), effective January 1, 2011; Stats 2013 ch 352 § 422 (AB 1317), effective September 26, 2013, operative July 1, 2013.

§ 11174.35. Plan to Track and Maintain Data on Child Deaths from Abuse and Neglect.

The State Department of Social Services shall work with state and local child death review teams and child protective services agencies in order to identify child death cases that were, or should have been, reported to or by county child protective services agencies. Findings made pursuant to this section shall be used to determine the extent of child abuse or neglect fatalities occurring in families known to child protective services agencies and to define child welfare training needs for reporting, cross-reporting, data integration, and involvement by child protective services agencies in multiagency review in child deaths. The State Department of Social Services, the State Department of Health Services, and the Department of Justice shall develop a plan to track and maintain data on child deaths from abuse or neglect, and submit this plan, not later than December 1, 1997, to the Senate Committee on Health and Human Services, the Assembly Committee on Human Services, and the chairs of the fiscal committees of the Legislature.

Leg.H.

1997 ch. 606, effective October 3, 1997, 2001 ch. 133, effective July 31, 2001, 2004 ch. 842 (SB 1313) (renumbered from § 11166.95).

TITLE 6

California Council on Criminal Justice

CHAPTER 3

OFFICE OF CRIMINAL JUSTICE PLANNING

§ 13823.11. Minimum Standards for Examination and Treatment of Sexual Assault Victims; Collection and Preservation of Evidence.

The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child sexual abuse, and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the medical evidentiary examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with the usual policy of the hospital, clinic, sexual assault forensic examination team, or other emergency medical facility.

(3) A victim of sexual assault shall be informed that the victim may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian, and a minor may consent to, or withhold consent for, a medical evidentiary examination without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken. The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e)

(1) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(2) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim at no cost to the victim.

(f)

(1) Each adult and minor victim of sexual assault who consents to a medical evidentiary examination shall have a physical examination that includes, but is not limited to, all of the following

(A) Inspection of the clothing, body, and external genitalia for injuries and foreign materials

(B) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(C) Documentation of injuries and evidence collected.

(2) Children shall not have internal vaginal or anal examinations unless absolutely necessary. This paragraph does not preclude careful collection of evidence using a swab.

(g) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except if the victim specifically objects:

(A) Clothing worn during the assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of semen.

(D) If indicated by the history of contact, the victim's urine and blood sample, for toxicology purposes, to determine if drugs or alcohol were used in connection with the assault. Toxicology results obtained pursuant to this paragraph shall not be admissible in any criminal or civil action or proceeding against a victim who consents to the collection of physical evidence pursuant to this paragraph. Except for purposes of prosecuting or defending the crime or crimes necessitating the examination specified by this section, any toxicology results obtained pursuant to this paragraph shall be kept confidential, may not be further disclosed, and shall not be required to be disclosed by the victim for any purpose not specified in this paragraph. The victim shall specifically be informed of the immunity and confidentiality safeguards provided by this subparagraph.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except if the victim specifically objects thereto. A reference specimen is a standard from which to obtain baseline information and may be retained for DNA comparison and analysis. Reference specimens may also be collected at a later time if they are needed. These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) Sexually transmitted infection testing and presumptive treatment based on current guidelines of the federal Centers for Disease Control and Prevention may be provided, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact and the age of the victim. Baseline testing for sexually transmitted infections shall be done for a child, a person with a disability, or a person who is residing in a long-term care facility, if forensically indicated.

(4)

(A) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(B) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim at no cost to the victim.

(5) For a victim of sexual assault with an assault history of strangulation, best practices shall be followed for a complete physical examination and diagnostic testing to prevent adverse outcomes or morbidity and documentation on a supplemental medical evidentiary examination form.

(h) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs shall be air-dried before packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

(5) A hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted shall develop and implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports, including proper preservation and disposition of the reports if the examination program ceases operation, in order to prevent destruction of the medical evidentiary examination reports.

(i) On or before January 1, 2021, a hospital, clinic, or other emergency medical facility at which medical evidentiary examinations are conducted shall implement a system to maintain medical evidentiary examination reports in a manner that facilitates their release only as required or authorized by law. This subdivision does not require a hospital, clinic, or other emergency medical facility to review a patient's medical records prior to January 1, 2021, in order to separate medical evidentiary examination reports from the rest of the patient's medical records.

Leg.H.

Added Stats 1985 ch 812 § 8. Amended Stats 1994 ch 1269 § 61.5 (AB 2208); Stats 2002 ch 382 § 1 (AB 1860) (ch 382 prevails), 787 § 30 (SB 1798); Stats 2003 ch 535 § 1 (AB 506); Stats 2016 ch 59 § 8 (SB 1474), effective January 1, 2017; Stats 2017 ch 692 § 5 (AB 1312), effective January 1, 2018; Stats 2019 ch 714 § 8 (AB 538), effective January 1, 2020.

PART 6

Control of Deadly Weapons

TITLE 1

Preliminary Provisions

DIVISION 2

DEFINITIONS

§ 17070. "Responsible adult".

As used in this part, "responsible adult" means a person at least 21 years of age who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

TITLE 4

Firearms

DIVISION 9

SPECIAL FIREARM RULES RELATING TO PARTICULAR PERSONS

CHAPTER 1

JUVENILE

ARTICLE 1

Possession of Handgun

§ 29610. Possession of Pistol, Revolver, or Other Firearm Capable of being Concealed upon Person by Minor Prohibited [Effective January 1, 2022].

(a) A minor shall not possess a handgun.

(b) A minor shall not possess a semiautomatic centerfire rifle.

(c) Commencing July 1, 2023, a minor shall not possess any firearm.

(d) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of this code shall not be punished under more than one provision.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2021 ch 250 § 21 (SB 715), effective January 1, 2022.

§ 29615. Exceptions [Effective January 1, 2022].

Section 29610 shall not apply if one of the following circumstances exists:

(a) The minor is accompanied by a parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity or hunting education, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves this use of a firearm.

(b) The minor is accompanied by a responsible adult, the minor has the prior written consent of a parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity or hunting education, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(c) The minor is at least 16 years of age, the minor has the prior written consent of a parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity or hunting education, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(d) The minor has the prior written consent of a parent or legal guardian, the minor is on lands owned or lawfully possessed by the parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(e) The minor possesses, with the express permission of their parent or legal guardian, a firearm, other than a handgun or semiautomatic centerfire rifle, and both of the following are true:

(1) The minor is actively engaged in, or in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or an agricultural, ranching, or hunting activity or hunting education, the nature of which involves the use of a firearm.

(2) The minor is 16 years of age or older or is accompanied by a responsible adult at all times while the minor is possessing the firearm.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2011 ch 296 § 238 (AB 1023), effective January 1, 2012; Stats 2021 ch 250 § 22 (SB 715), effective January 1, 2022.

ARTICLE 2

Possession of Live Ammunition

§ 29650. Possession of live ammunition by minor prohibited.

A minor shall not possess live ammunition.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

§ 29655. Exceptions.

Section 29650 shall not apply if one of the following circumstances exists:

(a) The minor has the written consent of a parent or legal guardian to possess live ammunition.

(b) The minor is accompanied by a parent or legal guardian.

(c) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

ARTICLE 3

Punishment

§ 29700. Punishment for violation of chapter.

Every minor who violates this chapter shall be punished as follows:

(a) By imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail if one of the following applies:

(1) The minor has been found guilty previously of violating this chapter.

(2) The minor has been found guilty previously of an offense specified in Section 29905, 32625, or 33410, or an offense specified in any provision listed in Section 16590.

(3) The minor has been found guilty of a violation of Section 29610.

(b) Violations of this chapter other than those violations specified in subdivision (a) shall be punishable as a misdemeanor.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2011 ch 15 § 547 (AB 109), effective April 4, 2011, operative January 1, 2012.

§ 29705. Requirement of Custodial Parent or Legal Guardian to Participate in Parenting Education Classes.

In a proceeding to enforce this chapter brought pursuant to Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the court may require the custodial parent or legal guardian of a minor who violates this chapter to participate in classes on parenting education that meet the requirements established in Section 16507.7 of the Welfare and Institutions Code.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

ARTICLE 4

Legislative Intent

§ 29750. Legislative intent.

(a) In enacting the amendments to former Sections 12078 and 12101 by Section 10 of Chapter 33 of the Statutes of 1994, First Extraordinary Session, it was not the intent of the Legislature to expand or narrow the application of the then-existing statutory and judicial authority as to the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

(b) In enacting the act that adds this subdivision, it is not the intent of the Legislature to expand or narrow the application of existing statutory and judicial authority as to the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2021 ch 250 § 24 (SB 715), effective January 1, 2022.

CHAPTER 2

PERSON CONVICTED OF SPECIFIED OFFENSE, ADDICTED TO NARCOTIC, OR SUBJECT TO COURT ORDER

ARTICLE 1

Prohibitions on Firearm Access

§ 29800. Person Convicted of Felony Owning, Purchasing, Receiving or Possessing Firearm.

(a)

(1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(3) Any person who has an outstanding warrant for any offense listed in this subdivision and who has knowledge of the outstanding warrant, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 23515, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, and who owns or has in possession or under custody or control any firearm is guilty of a felony.

(c) Subdivision (a) shall not apply to a conviction or warrant for a felony under the laws of the United States unless either of the following criteria, as applicable, is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2017 ch 17 § 44 (AB 103), effective June 27, 2017; Stats 2020 ch 306 § 1 (SB 723), effective January 1, 2021.

§ 29805. Person Convicted of Specified Misdemeanor Owning, Purchasing, Receiving or Possessing Firearm.

(a)

(1) Except as provided in Section 29855, subdivision (a) of Section 29800, or subdivision (b), any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, subdivision (f) of Section 148.5, Section 171b, paragraph (1) of subdivision (a) of Section 171c, Section 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 422.6, 626.9, 646.9, 830.95, 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 487 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Any person who has an outstanding warrant for any misdemeanor offense described in this subdivision, and who has knowledge of the outstanding warrant, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of Section 273.5, and who subsequently owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Except as provided in Section 29855, any person who is convicted on or after January 1, 2020, of a misdemeanor violation of Section 25100, 25135, or 25200, and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(d) The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

Leg.H.

Added Stats 2010 ch 711 § 6.76 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amendment approved by voters, Prop. 63 § 11.2, effective November 9, 2016; Stats 2017 ch 17 § 45 (AB 103), effective June 27, 2017; Stats 2017 ch 784 § 1 (AB 785), effective January 1, 2018; Stats 2018 ch 883 § 1 (AB 3129), effective January 1, 2019; Stats 2019 ch 256 § 13 (SB 781), effective January 1, 2020; Stats 2019 ch 840 § 13 (SB 172), effective January 1, 2020 (ch 840 prevails); Stats 2020 ch 306 § 2 (SB 723), effective January 1, 2021.

§ 29810. Relinquishment of Firearm by Convicted Person Subject to Section 29800 or 29805; Procedure.

(a)

(1) Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.

(2) The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited Persons Relinquishment Form developed by the Department of Justice.

(3) Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

(b) The Prohibited Persons Relinquishment Form shall do all of the following:

(1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivision (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.

(2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.

(3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.

(4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.

(5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.

(6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.

(7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).

(c)

(1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.

(2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the department whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

(3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.

(4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred

dollars ($100).

(d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who does not remain in custody at any time within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in paragraph (1) of subdivision (d) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who is in custody at any point within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within 14 days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within 14 days following conviction, along with the receipts described in paragraph (1) of subdivision (e) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within 14 days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(4) If the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant

shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to paragraph (1) of subdivision (d).

(f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in paragraph (3) of subdivision (c), or allow an alternative method of relinquishment.

(g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.

(h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.

(i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice, or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.

(j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.

(k) This section shall become operative on January 1, 2018.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2013 ch 739 § 2 (AB 539), effective January 1, 2014; Amendment approved by voters, Prop. 63 § 10.3, effective November 9, 2016.

§ 29815. Person with Probation Condition Prohibited from Owning, Possessing, Controlling, Receiving or Purchasing Firearm.

(a) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in possession or under custody or control, any firearm, but who is not subject to Section 29805 or subdivision (a) of Section 29800, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this section. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

§ 29820. Person Committing Specified Offense and Adjudged Ward of Court.

(a) This section applies to a person who satisfies both of the following requirements:

(1) The person meets one of the following:

(A) The person is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(B) The person was convicted of violating Section 11351 or 11351.5 of the Health and Safety Code by possessing for sale, or Section 11352 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of, or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of, the Health and Safety Code, or 57 grams or more of a substance containing at least 5 grams of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of, or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of, the Health and Safety Code.

(C) The person was convicted of violating Section 11378 of the Health and Safety Code by possessing for sale, or Section 11379 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine.

(D) The person was convicted of violating subdivision (a) of Section 11379.6 of the Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an act that is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code, except those who offer to perform an act that aids in the manufacture of phencyclidine.

(E) Except as otherwise provided in Section 1203.07, the person was convicted of violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or methamphetamine.

(F) The person was convicted of violating Section 11379.6, 11382, or 11383 of the Health and Safety Code with respect to methamphetamine, if the person has one or more prior convictions for a violation of Section 11378, 11379, 11379.6, 11380, 11382, or 11383 of the Health and Safety Code with respect to methamphetamine.

(G) The person was alleged to have committed an offense enumerated in Section 29805 or an offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

(2) The person is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in paragraph (1).

(b) A person described in subdivision (a) shall not own, or have in possession or under custody or control, a firearm until the person is 30 years of age or older.

(c) A violation of this section shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this section may be used to determine eligibility to acquire a firearm.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2021 ch 537 § 5 (SB 73), effective January 1, 2022.

§ 29825. Person Prohibited from Purchasing or Receiving Firearm by Temporary Restraining Order, Injunction, Protective Order.

(a) A person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) A person who owns or possesses a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders issued within the state that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer pursuant to Section 29830 for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

Leg.H.

Added Stats 2010 ch 711 § 6.77 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2013 ch 739 § 3 (AB 539), effective January 1, 2014; Stats 2019 ch 726 § 1 (AB 164), effective January 1, 2020.

§ 29830. Transfer of Firearm to Dealer During Ownership Prohibition.

(a) A person who is prohibited from owning or possessing a firearm or ammunition pursuant to any law, may transfer or cause to be transferred, any firearm or ammunition in his or her possession, or of which he or she is the owner, to a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, or may transfer ammunition to an ammunition vendor, licensed pursuant to Sections 30385 to 30395, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm or ammunition will expire on a specific ascertainable date, whether or not specified in the court order, or pursuant to Section 29800, 29805, or 29810.

(b) A firearms dealer or ammunition vendor who stores a firearm or ammunition pursuant to subdivision (a), may charge the owner a reasonable fee for the storage of the firearm or ammunition.

(c) A firearms dealer or ammunition vendor who stores a firearm or ammunition pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer or ammunition vendor has taken possession of the firearm or ammunition.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6.

(e) Any ammunition that is returned by a firearms dealer or ammunition vendor to the owner of the ammunition pursuant to this section shall be returned in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

(f) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

Leg.H.

Added Stats 2013 ch 739 § 4 (AB 539), effective January 1, 2014. Amended Stats 2015 ch 205 § 2 (AB 950), effective January 1, 2016; Stats 2018 ch 780 § 7 (SB 746), effective January 1, 2019, repealed July 1, 2020.

ARTICLE 2

Exemption or Petition for Relief

§ 29850. Justifiable Violation of Firearm Access Prohibitions.

(a) A violation of Section 29800, 29805, 29815, or 29820 is justifiable where all of the following conditions are met:

(1) The person found the firearm or took the firearm from a person who was committing a crime against the person who found or took the firearm.

(2) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law or to a licensed firearms dealer for transfer or for storage pursuant to Section 29830.

(3) If the firearm was transported to a law enforcement agency or to a licensed firearms dealer, it was transported in accordance with subdivision (b) of Section 25570.

(4) If the firearm is being transported to a law enforcement agency or to a licensed firearms dealer, the person transporting the firearm has given prior notice to the law enforcement agency or to the licensed firearms dealer that the person is transporting the firearm to the law enforcement agency or the licensed firearms dealer for disposition according to law.

(b) Upon the trial for violating Section 29800, 29805, 29815, or 29820, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this section.

(c) The defendant has the burden of proving by a preponderance of the evidence that the defendant comes within the provisions of the exemption created by this section.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2013 ch 739 § 5 (AB 539), effective January 1, 2014.

§ 29855. Person Employed as Peace Officer and Prohibited Under Section 29805; Petition.

(a) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by Section 29805 because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition.

(b) The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner.

(c) Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing.

(d) Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(2) Finds that the petitioner is not within a prohibited class as specified in Section 29815, 29820, 29825, or 29900, or subdivision (a) or (b) of Section 29800, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(3) Finds that the petitioner does not have a previous conviction under Section 29805, no matter when the prior conviction occurred.

(e) In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under Section 29805, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this section in cases in which relief is warranted. However, nothing in this section shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the

Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by Section 29805.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2011 ch 296 § 239 (AB 1023), effective January 1, 2012.

§ 29860. Person Subject to Prohibition Imposed by Section 29805; Petition.

(a) Any person who is subject to the prohibition imposed by Section 29805 because of a conviction of an offense prior to that offense being added to Section 29805 may petition the court only once for relief from this prohibition.

(b) The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner.

(c) Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing.

(d) Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(2) Finds that the petitioner is not within a prohibited class as specified in Section 29815, 29820, 29825, or 29900, or subdivision (a) or (b) of Section 29800, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(3) Finds that the petitioner does not have a previous conviction under Section 29805, no matter when the prior conviction occurred.

(e) In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this section in cases in which relief is warranted. However, nothing in this section shall be construed to require courts to grant relief to any particular petitioner.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

§ 29865. Immunity from Liability for False Arrest for Enforcing Prohibition Under Specified Circumstances.

Law enforcement officials who enforce the prohibition specified in Section 29805 against a person who has been granted relief pursuant to Section 29855 or 29860 shall be immune from any liability for false arrest arising from the enforcement of Section 29805 unless the person has in possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

ARTICLE 3

Miscellaneous Provisions

§ 29875. Protocol Regarding Possession of Firearm by Convicted Felon or Other Specified Persons.

Subject to available funding, the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of Section 12021, as it reads in Section 2 of Chapter 830 of the Statutes of 2002, and as later amended at any time before completion of the protocol. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to any provision of law. The protocol shall be completed on or before January 1, 2005.

Leg.H.

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.