

Memorandum 2007-16

**Technical and Minor Substantive Statutory Corrections:
Obsolete References to Recording Technology
(Draft of Tentative Recommendation)**

In the course of reporting on another matter, the staff made the following observations:

The Open Meeting Act, like many other statutes, includes references to "tape" recording that are technically obsolete when applied to digital recording technology that does not use "tape." Similar problems may exist with respect to photographic "film" or "negatives." This would seem to be an area in which the law could use some modernization. It would probably fall within our general authority to "study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study" (Gov't Code § 8298) or under our current resolution of authority, which authorizes study of matters relating to public records law (2003 Cal. Stat. res. ch. 92).

This strikes the staff as an ideal student project. It would be technical, but somewhat interesting. Very little Commission time would be involved. The staff requests authorization to assign this project to a student assistant on a low priority basis (i.e., if it can be done without delaying any of our other pending projects that may also benefit from student assistance).

CLRC Memorandum 2005-7, pp. 4-5.

The Commission approved that suggestion. See Minutes (January 1, 2005), p. 3.

This memorandum and the attached draft tentative recommendation are the result. The Commission should decide whether to circulate the attached tentative recommendation for public comment, with or without changes.

This memorandum was prepared with substantial help from Cherie Ackerman, a student at the McGeorge School of Law. We are grateful for her assistance. A memorandum from Ms. Ackerman further explaining the need for these revisions is attached to this memorandum as an Exhibit.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

INTRODUCTION

Many existing code sections that provide for an audio or video recording of an event make specific reference to a “tape,” “cassette,” “audiotape,” or “videotape.” The tentative recommendation proposes to revise these references so that the sections instead refer in a generic manner to any recording technology. The revisions would thereby allow use of existing digital recording technology that does not make use of a tape, as well as other recording technologies that may be developed in the future.

Similar changes were made in the Civil Discovery Act, pursuant to Commission recommendation. See *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm’n Reports 146 (2004), 2005 Cal. Stat. ch. 294.

Many of the revisions in the attached draft involve simply replacing a reference to “audio tape” or “videotape” with references to “audio recording” or “video recording,” or involve similar substitutions of terms. An example would be the proposed revision to Business and Professions Code Section 19870:

19870.

(d) All proceedings at a meeting of the commission relating to a license application shall be recorded stenographically or ~~on audiotape or videotape~~ by audio or video recording.

....

However, there are a few revisions that are not as straightforward. In addition, there are three categories of sections referencing “tape” recording for which revisions are not proposed.

OMITTED REVISIONS

Sections Containing “Catch All” Provisions

Several existing code sections reference a “tape,” “audiotape,” or “videotape” in a laundry list of items that also includes a catch-all provision that is sufficiently broad to encompass any recording technology. Other sections contain such references in a non-exclusive list of illustrative examples of a broadly described category of items.

In these instances revision was not necessary.

Sections That May Be Unconstitutional

Two sections in the Evidence Code that reference a “tape” recording — Evidence Code Sections 1350 and 1380 — might be subject to constitutional challenge based on a recent decision of the United States Supreme Court relating to a criminal defendant’s constitutional right of confrontation. See *Crawford v. Washington*, 541 U.S. 36 (2004) (adopting new approach to Confrontation Clause); *People v. Giles*, 40 Cal. 4th 833, 152 P.2d 433, 55 Cal. Rptr. 3d 133 (2007) (discussing forfeiture of Confrontation Clause rights after *Crawford* and briefly mentioning Section 1350); *People v. Pirwani*, 119 Cal. App. 4th 770, 14 Cal. Rptr. 3d 673 (2004) (declaring Section 1380 unconstitutional under *Crawford*); CLRC Memorandum 2004-45, pp. 27-30 (discussing Section 1350); CLRC Memorandum 2005-06, pp. 28-30 (discussing Section 1380).

Because the constitutional issues are currently unsettled, revisions to these two sections are not proposed.

Recording of Interrogation of Public Safety Officer

Government Code Section 3303 governs the interrogation of a public safety officer. In subdivision (g), the section provides:

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time.

Any perceived narrowing or expansion of the right to record an interrogation could be politically controversial. The section is not included in the proposed law.

SPECIAL REVISION ISSUES

Recording of Closed Sessions of Public Meetings

Government Code Section 11130 allows a court to order a public body to “tape record” the closed sessions of its meetings, and preserve the “tape” or “tape recording” for potential disclosure or discovery, following a judgment that the body has previously violated the law governing closed sessions.

The section is presumably intended to provide means to verify that a public body already found to have committed a violation relating to its closed sessions

does not continue to do so. In that context, the staff had a slight concern that a digital recording might be more easily lost, or altered in an undetectable manner, than a tape recording.

The staff has flagged this section with a note inviting comment from interested persons.

Videotaping of Testimony in Criminal Case

Penal Code Sections 1346, 1346.1, 1347, and 1347.5 provide for the videotaping of a victim's testimony in criminal cases when the victim is in a special class, and the defendant is charged with a specified crime. Three of the four sections expressly indicate that any videotaping allowed is subject to a protective order for the purpose of protecting the privacy of the victim.

The staff had a slight concern that allowing digital recording might undermine the policy of these sections. It might be more difficult for the court to control access to a digital recording, increasing the likelihood of a privacy breach.

The staff has flagged those sections with notes inviting comment from interested persons.

Respectfully submitted,

Steve Cohen
Staff Counsel

To: Steve Cohen

From: Cherie Ackerman

Date: April 9, 2007

RE: Technical Statutory Changes to Provide for Use of Modern Recording Technology

As advancements in technology occur, it becomes necessary to modify California law to reflect technological progress. One such advancement has occurred in the area of both audio and visual media recording. Throughout the California Code there are references to cassette tape and videotape use in various capacities; modernization of technology is making, and in some cases has already made, the use of such devices obsolete. This memorandum discusses technical changes which can be made throughout the California Code. These amendments modernize a variety of sections allowing for the use of current forms of technology as they become available. A draft of recommended amendments to California code sections making reference to specific types of dated technology is attached for review.

EFFECT OF REVISIONS

In total the recommended amendments affect forty-nine sections of the California Code. These sections each make specific reference to the use of tapes, cassettes, videotapes, or a variety of the three. In such instances there is concern that if an entity covered by the statute chose to use a modernized form of technology, such as digital sound recording rather than use of a tape recorder, they will be acting outside of statutory authorization. This raises concern as to whether simplified methods of recording and record keeping, i.e. digital, could legally be used or if the entity would be in violation of the statute. Additionally, it is often the case that use of these alternatives allows for less expense and easier storage. For example use of digitally recording sound files allows for data to remain as a computer file; the files can remain stored unless called upon by a party for inspection and then can be transposed to a media format that allows for playback on an alternative source. Further as society becomes modernized it becomes difficult to gain access to arcane forms of technology such as cassette players and VCR players making it not only difficult to use such methods to create sound and visual recordings, but also difficult for interested parties to have access to play back of the data.

However, the idea behind the changes is not to disallow the use of cassette tapes and videotapes as a form of recording technology. Rather the amendments are made in such a way that they merely expand the forms of technology allowed. This allows the statutes to become more inclusive giving entities and individuals who have the power to audio and visually record data the option of using the technology most readily available.

Recommendation

The proposal is to replace all specific references to types of recording devices and forms within the California Code with generic language. For example a reference to a “tape recording” would be amended to read “audio recording.” Such a change would allow for the continued use of the types of technology stated in the statute prior to the amendment, but would also allow for used of additional methods as advancements are made. Section 54953.3 of the Government Code is an example of a section which contains reference to specific types of records: tape and film.¹ The amendment to this section would read:

Gov. Code § 54953.5 (amended). Right to record proceedings; conditions; ~~tape~~ audio or ~~film~~ visual records made by or under direction of local agencies

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or ~~video-tape~~ visual recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any ~~tape or film~~ audio or visual record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a ~~video or tape~~ audio or visual recording shall be provided without charge on a ~~video or tape~~ an audio or visual player made available by the local agency.

Comment. Section 54953.5 is amended to expand references to tape and video recording to include additional forms of technology.

The change will allow for the use of digital in addition to other forms of recording technology to be used by a party or entity. While allowing for these additional means, the statute continues to allow the use of tape and film records to be used as they would still fall within the newly referenced audio or visual record.

¹ This form of amendment occurs in forty-nine sections which are attached to this memo, an example is provided here.

#T-101

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Technical and Minor Substantive Statutory Corrections: References to Recording Technology

April 2007

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 30, 2007.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
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SUMMARY OF TENTATIVE RECOMMENDATION

The Commission proposes technical and minor substantive revisions to generalize and modernize existing statutory references to audio or video recording.

Specifically, references to the use of a “tape,” “cassette,” “audiotape,” or “videotape” would be revised to instead refer in a generic manner to any recording technology. The revisions would thereby allow for use of existing digital recording technology that does not make use of a tape, as well as other recording technologies that may be developed in the future.

The Commission solicits public comment on these proposed revisions.

This recommendation was prepared pursuant to Government Code Section 8298.

TECHNICAL AND MINOR SUBSTANTIVE
STATUTORY CORRECTIONS: REFERENCES TO
RECORDING TECHNOLOGY

1 The Law Revision Commission is authorized by Government Code Section
2 8298 to study and recommend revisions correcting technical and minor substantive
3 defects in California statutes.

4 This tentative recommendation proposes statutory revisions to generalize and
5 modernize existing statutory references to audio or video recording. Specifically,
6 references to the use of a “tape,” “cassette,” “audiotape,” or “videotape” would be
7 revised to instead refer in a generic manner to any recording technology. The
8 revisions would thereby allow for use of existing digital recording technology that
9 does not make use of a tape, as well as other recording technologies that may be
10 developed in the future.

11 The Commission’s study of proposed technical and minor substantive statutory
12 revisions is ongoing. The Commission encourages interested persons to identify
13 other statutes that appear in need of technical or minor substantive revision.

14 **Introduction**

15 These revisions are consistent with two prior reforms: (1) a bill enacted in 2002,
16 revising numerous references to “audiotape and “videotape” in the Civil Discovery
17 Act,¹ and (2) similar prior revisions to a limited number of sections in the Civil
18 Discovery Act recommended by the Commission in 2004, and subsequently
19 enacted into law.²

20 Most of the proposed revisions involve simply replacing a reference to “audio
21 tape” or “videotape” with references to “audio recording” or “video recording,” or
22 involve similar substitutions of terms. An example would be the proposed revision
23 to Business and Professions Code Section 19870:

24 19870.

25 (d) All proceedings at a meeting of the commission relating to a license
26 application shall be recorded stenographically or ~~on audiotape or videotape~~ by
27 audio or video recording....

28 However, there are some revisions that are less straightforward. They are
29 described below.

1. 2002 Cal. Stat. ch. 1068.

2. See 2005 Cal. Stat. ch. 294; *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm’n Reports 146 (2004).

1 **Recording of Closed Sessions of Public Meetings**

2 Government Code Section 11130 allows a court to order a public body to “tape
3 record” the closed sessions of its meetings, and preserve the “tape” or “tape
4 recording” for potential disclosure or discovery, following a judgment that the
5 body has previously violated a provision of law governing closed sessions.

6 The section is presumably intended to provide means to verify that a public
7 body already found to have committed a violation relating to its closed sessions
8 does not continue to do so. Given that context, the Commission invites comment
9 on whether allowing a recording technology that does not record sound on a
10 discrete and readily identifiable medium could effect a substantive change in the
11 section. For example, it could be that a digital recording stored only on a computer
12 hard drive is more easily lost, or altered in an undetectable manner, than a
13 recording on tape.

14 **Videotaping of Testimony in Criminal Case**

15 Four sections of the Penal Code (Sections 1346, 1346.1, 1347, and 1347.5),
16 provide for the videotaping of a victim’s testimony in criminal cases when the
17 victim is in a special class, and the defendant is charged with a specified crime.
18 Three of the four sections expressly indicate that any videotaping allowed is
19 subject to a protective order for the purpose of protecting the privacy of the victim.

20 The Commission invites comment on whether recording through use of
21 technology that does not record on an easily identifiable and segregable medium
22 could effect a substantive change in these sections. The specific concern is that if
23 such technology was used, it might be more difficult for the court to control access
24 to the recording, increasing the likelihood of a privacy breach.

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PROPOSED LEGISLATION

Bus. & Prof. Code § 2293 (amended). Professional competency examination

SECTION 1. Section 2293 of the Business and Professions Code is amended to read:

2293. (a) The professional competency examination shall be in the form of an oral clinical examination to be administered by three physician examiners selected by the division or its designee, who shall test for medical knowledge specific to the physician’s specialty or specific suspected deficiency. The examination shall be ~~tape~~ audio recorded.

(b) A failing grade from two of the examiners shall constitute a failure of an examination. In the event of a failure, the board shall supply a true and correct copy of ~~a tape~~ the audio recording of the examination to the unsuccessful examinee.

(c) Within 45 days following receipt of the ~~tape~~ audio recording of the examination, a physician who fails the examination may request a hearing before the administrative law judge as designated in Section 11371 of the Government Code to determine whether he or she is entitled to take a second examination.

(d) If the physician timely requests a hearing concerning the right to reexamination under subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act. Upon a finding that the examination or procedure is unfair or that one or more of the examiners manifest bias towards the examinee, a reexamination shall be ordered.

(e) If the examinee fails the examination and is not afforded the right to reexamination, the division may take action pursuant to Section 2230 by directing that an accusation be filed charging the examinee with incompetency under subdivision (d) of Section 2234. The modes of discipline are set forth in Sections 2227 and 2228.

(f) Findings and conclusions reported by the examiners may be received in the administrative hearing on the accusation. The passing of the examination shall constitute prima facie evidence of present competence in the area of coverage of the examination.

(g) Competency examinations shall be conducted under a uniform examination system, and for that purpose the division may make arrangements with organizations furnishing examination material as deemed desirable.

Comment. Section 2293 is amended to reflect advances in recording technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio technology,” “audio recording,” or “audio record,” as context required).

1 **Bus. & Prof. Code § 3635 (amended). Continuing education**

2 SEC. _____. Section 3635 of the Business and Professions Code is amended to
3 read:

4 3635. (a) In addition to any other qualifications and requirements for licensure
5 renewal, the bureau shall require the satisfactory completion of 60 hours of
6 approved continuing education biennially. This requirement is waived for the
7 initial license renewal. The continuing education shall meet the following
8 requirements:

9 (1) At least 20 hours shall be in pharmacotherapeutics.

10 (2) No more than 15 hours may be in naturopathic medical journals or
11 osteopathic or allopathic medical journals, or audio or ~~videotaped~~ video recorded
12 presentations, slides, programmed instruction, or computer-assisted instruction or
13 preceptorships.

14 (3) No more than 20 hours may be in any single topic.

15 (4) No more than 15 hours of the continuing education requirements for the
16 specialty certificate in naturopathic childbirth attendance shall apply to the 60
17 hours of continuing education requirement.

18 (b) The continuing education requirements of this section may be met through
19 continuing education courses approved by the California Naturopathic Doctors
20 Association, the American Association of Naturopathic Physicians, the Medical
21 Board of California, the California State Board of Pharmacy, the State Board of
22 Chiropractic Examiners, or other courses approved by the bureau.

23 **Comment.** Subdivision (a)(2) of Section 3635 is amended to reflect advances in recording
24 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
25 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
26 technology,” “audio recording,” or “audio record,” as context required).

27 **Bus. & Prof. Code § 4846.5 (amended). Continuing education**

28 SEC. _____. Section 4846.5 of the Business and Professions Code is amended to
29 read:

30 4846.5. (a) On or after January 1, 2002, except as provided in this section, the
31 board shall issue renewal licenses only to those applicants that have completed a
32 minimum of 36 hours of continuing education in the preceding two years.

33 (b) (1) Notwithstanding any other provision of law, continuing education hours
34 shall be earned by attending courses relevant to veterinary medicine and sponsored
35 or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA) accredited veterinary
37 medical colleges.

38 (B) Accredited colleges or universities offering programs relevant to veterinary
39 medicine.

40 (C) The American Veterinary Medical Association.

41 (D) American Veterinary Medical Association recognized specialty or affiliated
42 allied groups.

1 (E) American Veterinary Medical Association's affiliated state veterinary
2 medical associations.

3 (F) Nonprofit annual conferences established in conjunction with state
4 veterinary medical associations.

5 (G) Educational organizations affiliated with the American Veterinary Medical
6 Association or its state affiliated veterinary medical associations.

7 (H) Local veterinary medical associations affiliated with the California
8 Veterinary Medical Association.

9 (I) Federal, state, or local government agencies.

10 (J) Providers accredited by the Accreditation Council for Continuing Medical
11 Education (ACCME) or approved by the American Medical Association (AMA),
12 providers recognized by the American Dental Association Continuing Education
13 Recognition Program (ADA CERP), and AMA or ADA affiliated state, local, and
14 specialty organizations.

15 (2) Continuing education credits shall be granted to those veterinarians taking
16 self-study courses, which may include, but are not limited to, reading journals,
17 viewing of ~~videotapes~~ video recordings, or listening to ~~audiotapes~~ audio
18 recordings. The taking of these courses shall be limited to no more than six hours
19 biennially.

20 (3) The board may approve other continuing veterinary medical education
21 providers not specified in paragraph (1).

22 (A) The board has the authority to recognize national continuing education
23 approval bodies for the purpose of approving continuing education providers not
24 specified in paragraph (1).

25 (B) Applicants seeking continuing education provider approval shall have the
26 option of applying to the board or to a board-recognized national approval body.

27 (4) For good cause, the board may adopt an order specifying, on a prospective
28 basis, that a provider of continuing veterinary medical education authorized
29 pursuant to paragraphs (1) or (2) is no longer an acceptable provider.

30 (5) Continuing education hours earned by attending courses sponsored or
31 cosponsored by those entities listed in paragraph (1) between January 1, 2000, and
32 the effective date of this act shall be credited toward a veterinarian's continuing
33 education requirement under this section.

34 (c) Every person renewing his or her license issued pursuant to Section 4846.4
35 or any person applying for relicensure or for reinstatement of his or her license to
36 active status, shall submit proof of compliance with this section to the board
37 certifying that he or she is in compliance with this section. Any false statement
38 submitted pursuant to this section shall be a violation subject to Section 4831.

39 (d) This section shall not apply to a veterinarian's first license renewal. This
40 section shall apply only to second and subsequent license renewals granted on or
41 after January 1, 2002.

42 (e) The board shall have the right to audit the records of all applicants to verify
43 the completion of the continuing education requirement. Applicants shall maintain

1 records of completion of required continuing education coursework for a period of
2 four years and shall make these records available to the board for auditing
3 purposes upon request. If the board, during this audit, questions whether any
4 course reported by the veterinarian satisfies the continuing education requirement,
5 the veterinarian shall provide information to the board concerning the content of
6 the course; the name of its sponsor and cosponsor, if any; and specify the specific
7 curricula that was of benefit to the veterinarian.

8 (f) A veterinarian desiring an inactive license or to restore an inactive license
9 under Section 701, shall submit an application on a form provided by the board. In
10 order to restore an inactive license to active status, the veterinarian shall have
11 completed a minimum of 36 hours of continuing education within the last two
12 years preceding application. The inactive license status of a veterinarian shall not
13 deprive the board of its authority to institute or continue a disciplinary action
14 against a licensee.

15 (g) Knowing misrepresentation of compliance with the requirements of this
16 article by a veterinarian constitutes unprofessional conduct and grounds for
17 disciplinary action or for the issuance of a citation and the imposition of a civil
18 penalty pursuant to Section 4883.

19 (h) The board, in its discretion, may exempt from the continuing education
20 requirement, any veterinarian who for reasons of health, military service, or undue
21 hardship, cannot meet those requirements. Applications for waivers shall be
22 submitted on a form provided by the board.

23 (i) The administration of this section may be funded through professional license
24 and continuing education provider fees. The fees related to the administration of
25 this section shall not exceed the costs of administering the corresponding
26 provisions of this section.

27 (j) For those continuing education providers not listed in paragraph (1) of
28 subdivision (b), the board or its recognized national approval agent shall establish
29 criteria by which a provider of continuing education shall be approved. The board
30 shall initially review and approve these criteria and may review the criteria as
31 needed. The board or its recognized agent shall monitor, maintain, and manage
32 related records and data. The board shall have the authority to impose an
33 application fee, not to exceed two hundred dollars (\$200) biennially, for
34 continuing education providers not listed in paragraph (1) of subdivision (b).

35 **Comment.** Subdivision (b)(2) of Section 4846.5 is amended to reflect advances in recording
36 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
37 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
38 technology,” “audio recording,” or “audio record,” as context required).

39 **Bus. & Prof. Code § 8027 (amended). Court reporting school requirements**

40 SEC. _____. Section 8027 of the Business and Professions Code is amended to
41 read:

1 8027. (a) As used in this section, “school” means a court reporter training
2 program or an institution that provides a course of instruction approved by the
3 board and the Bureau for Private Postsecondary and Vocational Education, is a
4 public school in this state, or is accredited by the Western Association of Schools
5 and Colleges.

6 (b) A court reporting school shall be primarily organized to train students for the
7 practice of shorthand reporting, as defined in Sections 8016 and 8017. Its
8 educational program shall be on the postsecondary or collegiate level. It shall be
9 legally organized and authorized to conduct its program under all applicable laws
10 of the state, and shall conform to and offer all components of the minimum
11 prescribed course of study established by the board. Its records shall be kept and
12 shall be maintained in a manner to render them safe from theft, fire, or other loss.
13 The records shall indicate positive daily and clock-hour attendance of each student
14 for all classes, apprenticeship and graduation reports, high school transcripts or the
15 equivalent or self-certification of high school graduation or the equivalent,
16 transcripts of other education, and student progress to date, including all progress
17 and counseling reports.

18 (c) Any school intending to offer a program in court reporting shall notify the
19 board within 30 days of the date on which it provides notice to, or seeks approval
20 from, the California Department of Education, the Bureau for Private
21 Postsecondary and Vocational Education, the Chancellor’s Office of the California
22 Community Colleges, or the Western Association of Schools and Colleges,
23 whichever is applicable. The board shall review the proposed curriculum and
24 provide the school tentative approval, or notice of denial, within 60 days of receipt
25 of the notice. The school shall apply for provisional recognition pursuant to
26 subdivision (d) within no more than one year from the date it begins offering court
27 reporting classes.

28 (d) The board may grant provisional recognition to a new court reporting school
29 upon satisfactory evidence that it has met all of the provisions of subdivision (b)
30 and this subdivision. Recognition may be granted by the board to a provisionally
31 recognized school after it has been in continuous operation for a period of no less
32 than three consecutive years from the date provisional recognition was granted,
33 during which period the school shall provide satisfactory evidence that at least one
34 person has successfully completed the entire course of study established by the
35 board and complied with the provisions of Section 8020, and has been issued a
36 certificate to practice shorthand reporting as defined in Sections 8016 and 8017.
37 The board may, for good cause shown, extend the three-year provisional
38 recognition period for not more than one year. Failure to meet the provisions and
39 terms of this section shall require the board to deny recognition. Once granted,
40 recognition may be withdrawn by the board for failure to comply with all
41 applicable laws and regulations.

42 (e) Application for recognition of a court reporting school shall be made upon a
43 form prescribed by the board and shall be accompanied by all evidence,

1 statements, or documents requested. Each branch, extension center, or off-campus
2 facility requires separate application.

3 (f) All recognized and provisionally recognized court reporting schools shall
4 notify the board of any change in school name, address, telephone number,
5 responsible court reporting program manager, owner of private schools, and the
6 effective date thereof, within 30 days of the change. All of these notifications shall
7 be made in writing.

8 (g) A school shall notify the board in writing immediately of the discontinuance
9 or pending discontinuance of its court reporting program or any of the program's
10 components. Within two years of the date this notice is sent to the board, the
11 school shall discontinue its court reporting program in its entirety. The board may,
12 for good cause shown, grant not more than two one-year extensions of this period
13 to a school. If a student is to be enrolled after this notice is sent to the board, a
14 school shall disclose to the student the fact of the discontinuance or pending
15 discontinuance of its court reporting program or any of its program components.

16 (h) The board shall maintain a roster of currently recognized and provisionally
17 recognized court reporting schools, including, but not limited to, the name,
18 address, telephone number, and the name of the responsible court reporting
19 program manager of each school.

20 (i) The board shall maintain statistics that display the number and passing
21 percentage of all first-time examinees, including, but not limited to, those qualified
22 by each recognized or provisionally recognized school and those first-time
23 examinees qualified by other methods as defined in Section 8020.

24 (j) Inspections and investigations shall be conducted by the board as necessary
25 to carry out this section, including, but not limited to, unannounced site visits.

26 (k) All recognized and provisionally recognized schools shall print in their
27 school or course catalog the name, address, and telephone number of the board. At
28 a minimum, the information shall be in 8-point bold type and include the
29 following statement:

30 "IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE
31 THE STATE LICENSING EXAMINATION, THE PERSON SHALL
32 COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR
33 INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A
34 COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE
35 RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF
36 CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER)."

37 (l) Each court reporting school shall file with the board, not later than June 30
38 of each year, a current school catalog that shows all course offerings and staff, and
39 for private schools, the owner, except that where there have been no changes to the
40 catalog within the previous year, no catalog need be sent. In addition, each school
41 shall also file with the board a statement certifying whether the school is in
42 compliance with all statutes and the rules and regulations of the board, signed by
43 the responsible court reporting program manager.

1 (m) A school offering court reporting may not make any written or verbal claims
2 of employment opportunities or potential earnings unless those claims are based
3 on verified data and reflect current employment conditions.

4 (n) If a school offers a course of instruction that exceeds the board's minimum
5 requirements, the school shall disclose orally and in writing the board's minimum
6 requirements and how the course of instruction differs from those criteria. The
7 school shall make this disclosure before a prospective student executes an
8 agreement obligating that person to pay any money to the school for the course of
9 instruction. The school shall also make this disclosure to all students enrolled on
10 January 1, 2002.

11 (o) Private and public schools shall provide each prospective student with all of
12 the following and have the prospective student sign a document that shall become
13 part of that individual's permanent record, acknowledging receipt of each item:

14 (1) A student consumer information brochure published by the board.

15 (2) A list of the school's graduation requirements, including the number of tests,
16 the pass point of each test, the speed of each test, and the type of test, such as jury
17 charge or literary.

18 (3) A list of requirements to qualify for the state certified shorthand reporter
19 licensing examination, including the number of tests, the pass point of each test,
20 the speed of each test, and the type of test, such as jury charge or literary, if
21 different than those requirements listed in paragraph (2).

22 (4) A copy of the school's board-approved benchmarks for satisfactory progress
23 as identified in subdivision (u).

24 (5) A report showing the number of students from the school who qualified for
25 each of the certified shorthand reporter licensing examinations within the
26 preceding two years, the number of those students that passed each examination,
27 the time, as of the date of qualification, that each student was enrolled in court
28 reporting school, and the placement rate for all students that passed each
29 examination.

30 (6) On and after January 1, 2005, the school shall also provide to prospective
31 students the number of hours each currently enrolled student who has qualified to
32 take the next licensing test, exclusive of transfer students, has attended court
33 reporting classes.

34 (p) All enrolled students shall have the information in subdivisions (n) and (o)
35 on file no later than June 30, 2005.

36 (q) Public schools shall provide the information in subdivisions (n) and (o) to
37 each new student the first day he or she attends theory or machine speed class, if it
38 was not provided previously.

39 (r) Each enrolled student shall be provided written notification of any change in
40 qualification or graduation requirements that is being implemented due to the
41 requirements of any one of the school's oversight agencies. This notice shall be
42 provided to each affected student at least 30 days before the effective date of the
43 change and shall state the new requirement and the name, address, and telephone

1 number of the agency that is requiring it of the school. Each student shall initial
2 and date a document acknowledging receipt of that information and that
3 document, or a copy thereof, shall be made part of the student's permanent file.

4 (s) Schools shall make available a comprehensive final examination in each
5 academic subject to any student desiring to challenge an academic class in order to
6 obtain credit towards certification for the state licensing examination. The points
7 required to pass a challenge examination shall not be higher than the minimum
8 points required of other students completing the academic class.

9 (t) An individual serving as a teacher, instructor, or reader shall meet the
10 qualifications specified by regulation for his or her position.

11 (u) Each school shall provide a substitute teacher or instructor for any class for
12 which the teacher or instructor is absent for two consecutive days or more.

13 (v) The board has the authority to approve or disapprove benchmarks for
14 satisfactory progress which each school shall develop for its court reporting
15 program. Schools shall use only board-approved benchmarks to comply with the
16 provisions of paragraph (4) of subdivision (o) and subdivision (u).

17 (w) Each school shall counsel each student a minimum of one time within each
18 12-month period to identify the level of attendance and progress, and the
19 prognosis for completing the requirements to become eligible to sit for the state
20 licensing examination. If the student has not progressed in accordance with the
21 board-approved benchmarks for that school, the student shall be counseled a
22 minimum of one additional time within that same 12-month period.

23 (x) The school shall provide to the board, for each student qualifying through the
24 school as eligible to sit for the state licensing examination, the number of hours
25 the student attended court reporting classes, both academic and machine speed
26 classes, including theory.

27 (y) The pass rate of first-time exam takers for each school offering court
28 reporting shall meet or exceed the average pass rate of all first-time test takers for
29 a majority of examinations given for the preceding three years. Failure to do so
30 shall require the board to conduct a review of the program. In addition, the board
31 may place the school on probation and may withdraw recognition if the school
32 continues to place below the above described standard on the two exams that
33 follow the three-year period.

34 (z) A school shall not require more than one 10-minute qualifying examination,
35 as defined in the regulations of the board, for a student to be eligible to sit for the
36 state certification examination.

37 (aa) A school shall provide the board the actual number of hours of attendance
38 for each applicant the school qualifies for the state licensing examination.

39 (bb) The board shall, by December 1, 2001, do the following by regulation as
40 necessary:

41 (1) Establish the format that shall be used by schools to report tracking of all
42 attendance hours and actual timeframes for completed coursework.

1 (2) Require schools to provide a minimum of 10 hours of live dictation class
2 each school week for every full-time student.

3 (3) Require schools to provide students with the opportunity to read back from
4 their stenographic notes a minimum of one time each day to his or her instructor.

5 (4) Require schools to provide students with the opportunity to practice with a
6 school-approved speed-building ~~tape~~ audio recording, or other assigned material, a
7 minimum of one hour per day after school hours as a homework assignment and
8 provide the notes from this ~~tape~~ audio recording to their instructor the following
9 day for review.

10 (5) Develop standardization of policies on the use and administration of qualifier
11 examinations by schools.

12 (6) Define qualifier exam as follows: the qualifier exam shall consist of 4-voice
13 testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and
14 in accordance with the guidelines followed by the board. Schools shall be required
15 to date and number each qualifier and announce the date and number to the
16 students at the time of administering the qualifier. All qualifiers shall indicate the
17 actual dictation time of the test and the school shall catalog and maintain the
18 qualifier for a period of not less than three years for the purpose of inspection by
19 the board.

20 (7) Require schools to develop a program to provide students with the
21 opportunity to interact with professional court reporters to provide skill support,
22 mentoring, or counseling which they can document at least quarterly.

23 (8) Define qualifications and educational requirements required of instructors
24 and readers that read test material and qualifiers.

25 (cc) The board shall adopt regulations to implement the requirements of this
26 section not later than September 1, 2002.

27 (dd) The board may recover costs for any additional expenses incurred under the
28 enactment amending this section in the 2001-02 Regular Session of the Legislature
29 pursuant to its fee authority in Section 8031.

30 **Comment.** Subdivision (bb)(4) of Section 8027 is amended to reflect advances in recording
31 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
32 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
33 technology,” “audio recording,” or “audio record,” as context required).

34 **Bus. & Prof. Code § 17539.55 (amended). Sweepstakes using 900 numbers**

35 SEC. _____. Section 17539.55 of the Business and Professions Code is amended
36 to read:

37 17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through
38 the use of a 900 number, unless the information provider registers with the
39 Department of Justice as provided in this section within 10 days after causing any
40 advertisement for the sweepstakes to be directed to any person in this state.

41 (b) The registration shall include the following information:

42 (1) Each 900 number to be used in the sweepstakes.

1 (2) The name and address of the information provider including corporate
2 identity, if any, and the name and address for the information provider's agent for
3 service of process within the state.

4 (3) A copy of the information provider's audio text, prerecorded, or live
5 operator scripts.

6 (4) A copy of the official rules for the sweepstakes.

7 (5) For television, video, or any on-screen advertisements, a copy of the
8 storyboard and ~~videotape~~ video recording.

9 (6) For radio advertisements, a copy of the script and audio ~~cassette~~ recording.

10 (7) For print or electronic form transmitted over the Internet, a copy of all
11 advertisements.

12 (8) For direct mail solicitations, a copy of all principal solicitations.

13 (9) For telephone solicitations, a copy of the script.

14 (10) The names of the carriers which the information provider plans to utilize to
15 carry the 900 number calls.

16 (c) The information provider shall pay an annual registration fee of fifty dollars
17 (\$50) for each 900 number used for sweepstakes purposes.

18 (d) It shall be unlawful for any information provider that operates a sweepstakes
19 to make reference, in any contact with the public, to the fact that the information
20 provider is registered with the Department of Justice, as required by this section,
21 or in any other manner imply that such registration represents approval of the
22 sweepstakes by the Department of Justice.

23 **Comment.** Section 17539.55 is amended to reflect advances in recording technology and for
24 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
25 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
26 "audio recording," or "audio record," as context required).

27 **Bus. & Prof. Code § 19513 (amended). Examinations**

28 SEC. _____. Section 19513 of the Business and Professions Code is amended to
29 read:

30 19513. (a) The board shall prepare both written and oral examinations. All
31 examinations shall be standardized and, in the case of oral examinations, ~~tape~~
32 audio recorded. Written examinations may be administered by members of the
33 board staff. Oral examinations shall be conducted by a panel of not less than three
34 board members.

35 (b) The board shall provide a detailed outline of the subjects to be covered by
36 the oral and written examinations for a license to every person who requests the
37 outline.

38 (c) The results of the oral and written examinations for stewards licenses shall
39 be a public record.

40 **Comment.** Section 19513 is amended to reflect advances in recording technology and for
41 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
42 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
43 "audio recording," or "audio record," as context required).

1 **Bus. & Prof. Code § 19576 (amended). Recording of race for commercial purpose**

2 SEC. _____. Section 19576 of the Business and Professions Code is amended to
3 read:

4 19576. (a) No person may furnish ~~a tape~~ an audio or video recording of any
5 quarter horse race occurring in this state to any other person either within or
6 outside of the state for any commercial purpose, including the use of the ~~tape~~
7 recording in any type of video game, without first securing the consent of the
8 racing association conducting the meeting, the organization representing horsemen
9 participating in the meeting, and the board.

10 (b) No person may use any ~~tape~~ audio or video recording of any quarter horse
11 race occurring in this state for any commercial purpose without first securing the
12 consent of the racing association holding the meeting, the organization
13 representing horsemen participating in the meeting, and the board.

14 (c) Any person whose consent is required under this section may file and
15 maintain an action in superior court to obtain an injunction against the furnishing
16 or commercial use of a recording of a quarter horse race ~~tape~~ in violation of this
17 section.

18 **Comment.** Section 19576 is amended to reflect advances in recording technology and for
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
20 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
21 “audio recording,” or “audio record,” as context required).

22 **Bus. & Prof. Code § 19861 (amended). Licensing of gambling establishment**

23 SEC. _____. Section 19861 of the Business and Professions Code is amended to
24 read:

25 19861. Notwithstanding subdivision (i) of Section 19801, the commission shall
26 not deny a license to a gambling establishment solely because it is not open to the
27 public, provided that all of the following are true: (a) the gambling establishment
28 is situated in a local jurisdiction that has an ordinance allowing only private clubs,
29 and the gambling establishment was in operation as a private club under that
30 ordinance on December 31, 1997, and met all applicable state and local gaming
31 registration requirements; (b) the gambling establishment consists of no more than
32 five gaming tables; (c) ~~videotaped~~ video recordings of the entrance to the
33 gambling room or rooms and all tables situated therein are made during all hours
34 of operation by means of closed circuit television cameras, and these ~~tapes~~
35 recordings are retained for a period of 30 days and are made available for review
36 by the division or commission upon request; and (d) the gambling establishment is
37 open to members of the private club and their spouses in accordance with
38 membership criteria in effect as of December 31, 1997.

39 A gambling establishment meeting these criteria, in addition to the other
40 requirements of this chapter, may be licensed to operate as a private club gambling
41 establishment until November 30, 2003, or until the ownership or operation of the
42 gambling establishment changes from the ownership or operation as of January 1,

1 1998, whichever occurs first. Operation of the gambling establishments after this
2 date shall only be permitted if the local jurisdiction approves an ordinance,
3 pursuant to Sections 19961 and 19962, authorizing the operation of gambling
4 establishments that are open to the public. The commission shall adopt regulations
5 implementing this section. Prior to the commission's issuance of a license to a
6 private club, the division shall ensure that the ownership of the gambling
7 establishment has remained constant since January 1, 1998, and the operation of
8 the gambling establishment has not been leased to any third party.

9 **Comment.** Section 19861 is amended to reflect advances in recording technology and for
10 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
11 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
12 "audio recording," or "audio record," as context required).

13 **Bus. & Prof. Code § 19870 (amended). Grant or denial of license**

14 SEC. _____. Section 19870 of the Business and Professions Code is amended to
15 read:

16 19870. (a) The commission, after considering the recommendation of the
17 director and any other testimony and written comments as may be presented at the
18 meeting, or as may have been submitted in writing to the commission prior to the
19 meeting, may either deny the application or grant a license to an applicant who it
20 determines to be qualified to hold the license.

21 (b) When the commission grants an application for a license or approval, the
22 commission may limit or place restrictions thereon as it may deem necessary in
23 the public interest, consistent with the policies described in this chapter.

24 (c) When an application is denied, the commission shall prepare and file a
25 detailed statement of its reasons for the denial.

26 (d) All proceedings at a meeting of the commission relating to a license
27 application shall be recorded stenographically or ~~on audiotape or videotape~~ by
28 audio or video recording.

29 (e) A decision of the commission denying a license or approval, or imposing any
30 condition or restriction on the grant of a license or approval may be reviewed by
31 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5
32 of the Code of Civil Procedure shall not apply to any judicial proceeding described
33 in the foregoing sentence, and the court may grant the petition only if the court
34 finds that the action of the commission was arbitrary and capricious, or that the
35 action exceeded the commission's jurisdiction.

36 **Comment.** Section 19870 is amended to reflect advances in recording technology and for
37 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
38 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
39 "audio recording," or "audio record," as context required).

40 **Bus. & Prof. Code § 21701.1 (amended). Transport of storage containers**

41 SEC. _____. Section 21701.1 of the Business and Professions Code is amended
42 to read:

1 21701.1. (a) The owner or operator of a self-service storage facility or a
2 household goods carrier, may, for a fee, transport individual storage containers to
3 and from a self-service storage facility that he or she owns or operates. This
4 transportation activity, whether performed by an owner, operator, or carrier, shall
5 not be deemed transportation for compensation or hire as a business of used
6 household goods and is not subject to regulation under Chapter 7 (commencing
7 with Section 5101) of Division 2 of the Public Utilities Code, provided that all of
8 the following requirements are met:

9 (1) The fee charged (A) to deliver an empty individual storage container to a
10 customer and to transport the loaded container to a self-service storage facility or
11 (B) to return a loaded individual storage container from a self-service storage
12 facility to the customer does not exceed one hundred dollars (\$100).

13 (2) The owner, operator, or carrier, or any affiliate of the owner, operator, or
14 carrier, does not load, pack, or otherwise handle the contents of the container.

15 (3) The owner, operator, or carrier is registered under Chapter 2 (commencing
16 with Section 34620) of Division 14.85 of the Vehicle Code or holds a permit
17 under Chapter 7 (commencing with Section 5101) of Division 2 of the Public
18 Utilities Code.

19 (4) The owner, operator, or carrier has procured and maintained cargo insurance
20 in the amount of at least twenty thousand dollars (\$20,000) per shipment. Proof of
21 cargo insurance coverage shall be maintained on file and presented to the
22 Department of Motor Vehicles or Public Utilities Commission upon written
23 request.

24 (5) The owner, operator, or carrier shall disclose to the customer in advance the
25 following information regarding the container transfer service offered, in a written
26 document separate from others furnished at the time of disclosure:

27 (A) A detailed description of the transfer service, including a commitment to use
28 its best efforts to place the container in an appropriate location designated by the
29 customer.

30 (B) The dimensions and construction of the individual storage containers used.

31 (C) The unit charge, if any, for the container transfer service that is in addition
32 to the storage charge or any other fees under the rental agreement.

33 (D) The availability of delivery or pickup by the customer of his or her goods at
34 the self-service storage facility.

35 (E) The maximum allowable distance, measured from the self-service storage
36 facility, for the initial pickup and final delivery of the loaded container.

37 (F) The precise terms of the company's right to move a container from the initial
38 storage location at its own discretion and a statement that the customer will not be
39 required to pay additional charges with respect to that transfer.

40 (G) Conspicuous disclosure in bold text of the allocation of responsibility for the
41 risk of loss or damage to the customer's goods, including any disclaimer of the
42 company's liability, and the procedure for presenting any claim regarding loss or
43 damage to the company.

1 The disclosure of terms and conditions required by this subdivision, and the
2 rental agreement, shall be received by the customer a minimum of 72 hours prior
3 to delivery of the empty individual storage container; however, the customer may,
4 in writing, knowingly and voluntarily waive that receipt. The company shall
5 record in writing, and retain for a period of at least six months after the end of the
6 rental, the time and method of delivery of the information, any waiver made by the
7 customer, and the times and dates of initial pickup and redelivery of the
8 containerized goods.

9 (6) No later than the time the empty individual storage container is delivered to
10 the customer, the company shall provide the customer with an informational
11 brochure containing the following information about loading the container:

12 (A) Packing and loading tips to minimize damage in transit.

13 (B) A suggestion that the customer make an inventory of the items as they are
14 loaded and keep any other record (for example, photographs or ~~videotape~~ video
15 recording) that may assist in any subsequent claims processing.

16 (C) A list of items that are impermissible to pack in the container (for example,
17 flammable items).

18 (D) A list of items that are not recommended to be packed in light of foreseeable
19 hazards inherent in the company's handling of the containers and in light of any
20 limitation of liability contained in the rental agreement.

21 (b) Pickup and delivery of the individual storage containers shall be on a date
22 agreed upon between the customer and the company. If the company requires the
23 customer to be physically present at the time of pickup, the company shall in fact
24 be at the customer's premises prepared to perform the service not more than four
25 hours later than the scheduled time agreed to by the customer and company, and in
26 the event of a preventable breach of that obligation by the company, the customer
27 shall be entitled to receive a penalty of fifty dollars (\$50) from the company and to
28 elect rescission of the rental agreement without liability.

29 (c) No charge shall be assessed with respect to any movement of the container
30 between self-service storage facilities by the company at its own discretion, nor
31 for the delivery of a container to a customer's premises if the customer advises the
32 company, at least 24 hours before the agreed time of container dropoff, orally or in
33 writing, that he or she is rescinding the request for service.

34 (d) For purposes of this chapter, "individual storage container" means a
35 container that meets all of the following requirements:

36 (1) It shall be fully enclosed and locked.

37 (2) It contains not less than 100 and not more than 1,100 cubic feet.

38 (3) It is constructed out of a durable material appropriate for repeated use. A box
39 constructed out of cardboard or a similar material shall not constitute an individual
40 storage container for purposes of this section.

41 (e) Nothing in this section shall be construed to limit the authority of the Public
42 Utilities Commission to investigate and commence an appropriate enforcement
43 action pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the

1 Public Utilities Code against any person transporting household goods in
2 individual storage containers in a manner other than that described in this section.

3 **Comment.** Subdivision (a)(6)(B) of Section 21701.1 is amended to reflect advances in
4 recording technology and for consistency of terminology. For a similar reform, see 2002 Cal.
5 Stat. ch. 1068 (replacing numerous references to “audiotape” in Civil Discovery Act with either
6 “audio technology,” “audio recording,” or “audio record,” as context required).

7 **Bus. & Prof. Code § 25658.4 (amended). Professional competency examination**

8 SEC. _____. Section 25658.4 of the Business and Professions Code is amended
9 to read:

10 25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of
11 alcoholic beverages unless the clerk executes under penalty of perjury on the first
12 day he or she makes that sale an application and acknowledgment. The application
13 and acknowledgment shall be in a form understandable to the clerk.

14 (1) The department shall specify the form of the application and
15 acknowledgment which shall include at a minimum a summary of this division
16 pertaining to the following:

17 (A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the
18 sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

19 (B) Bona fide evidence of majority as provided in Section 25660.

20 (C) Hours of operation as provided in Article 2 (commencing with Section
21 25630) of Chapter 16.

22 (D) The prohibitions contained in subdivision (a) of Section 25602 and Section
23 25602.1 pertaining to sales to an intoxicated person.

24 (E) Sections 23393 and 23394 as they pertain to on-premises consumption of
25 alcoholic beverages in an off-sale premises.

26 (F) The requirements and prohibitions contained in Section 25659.5 pertaining
27 to sales of keg beer for consumption off licensed premises.

28 (2) The application and acknowledgment shall also include a statement that the
29 clerk has read and understands the summary, a statement that the clerk has never
30 been convicted of violating this division or, if convicted, an explanation of the
31 circumstances of each conviction, and a statement that the application and
32 acknowledgment is executed under penalty of perjury.

33 (3) The licensee shall keep the executed application and acknowledgment on the
34 premises at all times and available for inspection by the department. A licensee
35 with more than one licensed off-sale premises in the state may comply with this
36 subdivision by maintaining an executed application and acknowledgment at a
37 designated licensed premises, regional office, or headquarters office in the state.
38 An executed application and acknowledgment maintained at the designated
39 locations shall be valid for all licensed off-sale premises owned by the licensee.
40 Any licensee maintaining an application and acknowledgment at a designated site
41 other than the individual licensed off-sale premises shall notify the department in
42 advance and in writing of the site where the application and acknowledgment shall

1 be maintained and available for inspection. A licensee electing to maintain
2 application and acknowledgments at a designated site other than the licensed
3 premises shall maintain at each licensed premises a notice of where the executed
4 application and acknowledgments are located. Any licensee with more than one
5 licensed off-sale premises who elects to maintain the application and
6 acknowledgments at a designated site other than each licensed premises shall
7 provide the department, upon written demand, a copy of any employee's executed
8 application and acknowledgment within 10 business days. A violation of this
9 subdivision by a licensee constitutes grounds for discipline by the department.

10 (b) On and after January 1, 1992, the licensee shall post a notice that contains
11 and describes, in concise terms, prohibited sales of alcoholic beverages, a
12 statement that the off-sale seller will refuse to make a sale if the seller reasonably
13 suspects that the Alcoholic Beverage Control Act may be violated, and a statement
14 that a minor who purchases or attempts to purchase alcoholic beverages is subject
15 to suspension or delay in the issuance of his or her driver's license pursuant to
16 Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or
17 at a point of sale in the licensed premises or in any other location that is visible to
18 purchasers of alcoholic beverages and to the off-sale seller.

19 (c) On and after January 1, 1998, a retail licensee shall post a notice that
20 contains and describes, in concise terms, the fines and penalties for any violation
21 of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of
22 alcoholic beverages by, any person under the age of 21 years.

23 (d) Nonprofit organizations or licensees may obtain ~~videotapes~~ video recordings
24 and other training materials from the department on the Licensee Education on
25 Alcohol and Drugs (LEAD) program. The ~~videotapes~~ video recordings and
26 training materials may be updated periodically and may be provided in English
27 and other languages, and when made available by the department, shall be
28 provided at cost.

29 (e) As used in this section:

30 (1) "Off-sale seller" means any person holding a retail off-sale license issued by
31 the department and any person employed by that licensee who in the course of that
32 employment sells alcoholic beverages.

33 (2) "Clerk" means an off-sale seller who is not a licensee.

34 (f) The department may adopt rules and appropriate fees for licensees that it
35 determines necessary for the administration of this section.

36 **Comment.** Subdivision (d) of Section 25658.4 is amended to reflect advances in recording
37 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
38 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
39 technology," "audio recording," or "audio record," as context required).

40 **Civ. Code § 916 (amended). Inspection and testing**

41 SEC. _____. Section 916 of the Civil Code is amended to read:

1 916. (a) If a builder elects to inspect the claimed unmet standards, the builder
2 shall complete the initial inspection and testing within 14 days after
3 acknowledgment of receipt of the notice of the claim, at a mutually convenient
4 date and time. If the homeowner has retained legal representation, the inspection
5 shall be scheduled with the legal representative's office at a mutually convenient
6 date and time, unless the legal representative is unavailable during the relevant
7 time periods. All costs of builder inspection and testing, including any damage
8 caused by the builder inspection, shall be borne by the builder. The builder shall
9 also provide written proof that the builder has liability insurance to cover any
10 damages or injuries occurring during inspection and testing. The builder shall
11 restore the property to its pretesting condition within 48 hours of the testing. The
12 builder shall, upon request, allow the inspections to be observed and ~~electronically~~
13 ~~recorded, videotaped~~ video recorded or photographed by the claimant or his or her
14 legal representative.

15 (b) Nothing that occurs during a builder's or claimant's inspection or testing
16 may be used or introduced as evidence to support a spoliation defense by any
17 potential party in any subsequent litigation.

18 (c) If a builder deems a second inspection or testing reasonably necessary, and
19 specifies the reasons therefor in writing within three days following the initial
20 inspection, the builder may conduct a second inspection or testing. A second
21 inspection or testing shall be completed within 40 days of the initial inspection or
22 testing. All requirements concerning the initial inspection or testing shall also
23 apply to the second inspection or testing.

24 (d) If the builder fails to inspect or test the property within the time specified,
25 the claimant is released from the requirements of this section and may proceed
26 with the filing of an action. However, the standards set forth in the other chapters
27 of this title shall continue to apply to the action.

28 (e) If a builder intends to hold a subcontractor, design professional, individual
29 product manufacturer, or material supplier, including an insurance carrier,
30 warranty company, or service company, responsible for its contribution to the
31 unmet standard, the builder shall provide notice to that person or entity sufficiently
32 in advance to allow them to attend the initial, or if requested, second inspection of
33 any alleged unmet standard and to participate in the repair process. The claimant
34 and his or her legal representative, if any, shall be advised in a reasonable time
35 prior to the inspection as to the identity of all persons or entities invited to attend.
36 This subdivision does not apply to the builder's insurance company. Except with
37 respect to any claims involving a repair actually conducted under this chapter,
38 nothing in this subdivision shall be construed to relieve a subcontractor, design
39 professional, individual product manufacturer, or material supplier of any liability
40 under an action brought by a claimant.

41 **Comment.** Subdivision (a) of Section 916 is amended to reflect advances in recording
42 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068

1 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
2 technology,” “audio recording,” or “audio record,” as context required).

3 **Civ. Code § 922 (amended). Recording of repair**

4 SEC. _____. Section 922 of the Civil Code is amended to read:

5 922. The builder shall, upon request, allow the repair to be observed and
6 ~~electronically recorded, videotaped,~~ video recorded or photographed by the
7 claimant or his or her legal representative. Nothing that occurs during the repair
8 process may be used or introduced as evidence to support a spoliation defense by
9 any potential party in any subsequent litigation.

10 **Comment.** Section 922 is amended to reflect advances in recording technology and for
11 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
12 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
13 “audio recording,” or “audio record,” as context required).

14 **Civ. Code § 1799.3 (amended). Disclosure of personal information**

15 SEC. _____. Section 1799.3 of the Civil Code is amended to read:

16 1799.3. (a) No person providing ~~video cassette recording~~ video recording sales or rental services
17 shall disclose any personal information or the contents of any record, including
18 sales or rental information, which is prepared or maintained by that person, to any
19 person, other than the individual who is the subject of the record, without the
20 written consent of that individual.

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

22 (1) To a disclosure to any person pursuant to a subpoena or court order.

23 (2) To a disclosure which is in response to the proper use of discovery in a
24 pending civil action.

25 (3) To a disclosure to any person acting pursuant to a lawful search warrant.

26 (4) To a disclosure to a law enforcement agency when required for
27 investigations of criminal activity, unless that disclosure is prohibited by law.

28 (5) To a disclosure to a taxing agency for purposes of tax administration.

29 (6) To a disclosure of names and addresses only for commercial purposes.

30 (c) Any willful violation of this section shall be subject to a civil penalty not to
31 exceed five hundred dollars (\$500) for each violation, which may be recovered in
32 a civil action brought by the person who is the subject of the records.

33 (d) (1) Any person who willfully violates this section on three or more
34 occasions in any six-month period shall, in addition, be subject to a civil penalty
35 not to exceed five hundred dollars (\$500) for each violation, which may be
36 assessed and recovered in a civil action brought in the name of the people of the
37 State of California by the Attorney General, by any district attorney or city
38 attorney, or by a city prosecutor in any city or city and county having a full-time
39 city prosecutor, in any court of competent jurisdiction.

40 (2) If the action is brought by the Attorney General, one-half of the penalty
41 collected shall be paid to the treasurer of the county in which the judgment was
42 entered, and one-half to the General Fund. If the action is brought by a district

1 attorney, the penalty collected shall be paid to the treasurer of the county in which
2 the judgment was entered. If the action is brought by a city attorney or city
3 prosecutor, one-half of the penalty shall be paid to the treasurer of the city in
4 which the judgment was entered, and one-half to the treasurer of the county in
5 which the judgment was entered.

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

8 **Comment.** Subdivision (a) of Section 1799.3 is amended to reflect advances in recording
9 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
10 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
11 technology,” “audio recording,” or “audio record,” as context required).

12 **Civ. Code § 3344.1 (amended). Use of deceased personality’s likeness**

13 SEC. _____. Section 3344.1 of the Civil Code is amended to read:

14 3344.1. (a) (1) Any person who uses a deceased personality’s name, voice,
15 signature, photograph, or likeness, in any manner, on or in products, merchandise,
16 or goods, or for purposes of advertising or selling, or soliciting purchases of,
17 products, merchandise, goods, or services, without prior consent from the person
18 or persons specified in subdivision (c), shall be liable for any damages sustained
19 by the person or persons injured as a result thereof. In addition, in any action
20 brought under this section, the person who violated the section shall be liable to
21 the injured party or parties in an amount equal to the greater of seven hundred fifty
22 dollars (\$750) or the actual damages suffered by the injured party or parties, as a
23 result of the unauthorized use, and any profits from the unauthorized use that are
24 attributable to the use and are not taken into account in computing the actual
25 damages. In establishing these profits, the injured party or parties shall be required
26 to present proof only of the gross revenue attributable to the use and the person
27 who violated the section is required to prove his or her deductible expenses.
28 Punitive damages may also be awarded to the injured party or parties. The
29 prevailing party or parties in any action under this section shall also be entitled to
30 attorneys’ fees and costs.

31 (2) For purposes of this subdivision, a play, book, magazine, newspaper, musical
32 composition, audiovisual work, radio or television program, single and original
33 work of art, work of political or newsworthy value, or an advertisement or
34 commercial announcement for any of these works, shall not be considered a
35 product, article of merchandise, good, or service if it is fictional or nonfictional
36 entertainment, or a dramatic, literary, or musical work.

37 (3) If a work that is protected under paragraph (2) includes within it a use in
38 connection with a product, article of merchandise, good, or service, this use shall
39 not be exempt under this subdivision, notwithstanding the unprotected use’s
40 inclusion in a work otherwise exempt under this subdivision, if the claimant
41 proves that this use is so directly connected with a product, article of merchandise,
42 good, or service as to constitute an act of advertising, selling, or soliciting

1 purchases of that product, article of merchandise, good, or service by the deceased
2 personality without prior consent from the person or persons specified in
3 subdivision (c).

4 (b) The rights recognized under this section are property rights, freely
5 transferable, in whole or in part, by contract or by means of trust or testamentary
6 documents, whether the transfer occurs before the death of the deceased
7 personality, by the deceased personality or his or her transferees, or, after the death
8 of the deceased personality, by the person or persons in whom the rights vest
9 under this section or the transferees of that person or persons.

10 (c) The consent required by this section shall be exercisable by the person or
11 persons to whom the right of consent, or portion thereof, has been transferred in
12 accordance with subdivision (b), or if no transfer has occurred, then by the person
13 or persons to whom the right of consent, or portion thereof, has passed in
14 accordance with subdivision (d).

15 (d) Subject to subdivisions (b) and (c), after the death of any person, the rights
16 under this section shall belong to the following person or persons and may be
17 exercised, on behalf of and for the benefit of all of those persons, by those persons
18 who, in the aggregate, are entitled to more than a one-half interest in the rights:

19 (1) The entire interest in those rights belong to the surviving spouse of the
20 deceased personality unless there are any surviving children or grandchildren of
21 the deceased personality, in which case one-half of the entire interest in those
22 rights belong to the surviving spouse.

23 (2) The entire interest in those rights belong to the surviving children of the
24 deceased personality and to the surviving children of any dead child of the
25 deceased personality unless the deceased personality has a surviving spouse, in
26 which case the ownership of a one-half interest in rights is divided among the
27 surviving children and grandchildren.

28 (3) If there is no surviving spouse, and no surviving children or grandchildren,
29 then the entire interest in those rights belong to the surviving parent or parents of
30 the deceased personality.

31 (4) The rights of the deceased personality's children and grandchildren are in all
32 cases divided among them and exercisable in the manner provided in Section 240
33 of the Probate Code according to the number of the deceased personality's
34 children represented. The share of the children of a dead child of a deceased
35 personality can be exercised only by the action of a majority of them.

36 (e) If any deceased personality does not transfer his or her rights under this
37 section by contract, or by means of a trust or testamentary document, and there are
38 no surviving persons as described in subdivision (d), then the rights set forth in
39 subdivision (a) shall terminate.

40 (f) (1) A successor in interest to the rights of a deceased personality under this
41 section or a licensee thereof may not recover damages for a use prohibited by this
42 section that occurs before the successor in interest or licensee registers a claim of
43 the rights under paragraph (2).

1 (2) Any person claiming to be a successor in interest to the rights of a deceased
2 personality under this section or a licensee thereof may register that claim with the
3 Secretary of State on a form prescribed by the Secretary of State and upon
4 payment of a fee as set forth in subdivision (d) of Section 12195 of the
5 Government Code. The form shall be verified and shall include the name and date
6 of death of the deceased personality, the name and address of the claimant, the
7 basis of the claim, and the rights claimed.

8 (3) Upon receipt and after filing of any document under this section, the
9 Secretary of State shall post the document along with the entire registry of persons
10 claiming to be a successor in interest to the rights of a deceased personality or a
11 registered licensee under this section upon the World Wide Web, also known as
12 the Internet. The Secretary of State may microfilm or reproduce by other
13 techniques any of the filings or documents and destroy the original filing or
14 document. The microfilm or other reproduction of any document under the
15 provisions of this section shall be admissible in any court of law. The microfilm or
16 other reproduction of any document may be destroyed by the Secretary of State 70
17 years after the death of the personality named therein.

18 (4) Claims registered under this subdivision shall be public records.

19 (g) No action shall be brought under this section by reason of any use of a
20 deceased personality's name, voice, signature, photograph, or likeness occurring
21 after the expiration of 70 years after the death of the deceased personality.

22 (h) As used in this section, "deceased personality" means any natural person
23 whose name, voice, signature, photograph, or likeness has commercial value at the
24 time of his or her death, whether or not during the lifetime of that natural person
25 the person used his or her name, voice, signature, photograph, or likeness on or in
26 products, merchandise or goods, or for purposes of advertising or selling, or
27 solicitation of purchase of, products, merchandise, goods, or services. A "deceased
28 personality" shall include, without limitation, any such natural person who has
29 died within 70 years prior to January 1, 1985.

30 (i) As used in this section, "photograph" means any photograph or photographic
31 reproduction, still or moving, or any video ~~tape~~ recording or live television
32 transmission, of any person, such that the deceased personality is readily
33 identifiable. A deceased personality shall be deemed to be readily identifiable
34 from a photograph when one who views the photograph with the naked eye can
35 reasonably determine who the person depicted in the photograph is.

36 (j) For purposes of this section, a use of a name, voice, signature, photograph, or
37 likeness in connection with any news, public affairs, or sports broadcast or
38 account, or any political campaign, shall not constitute a use for which consent is
39 required under subdivision (a).

40 (k) The use of a name, voice, signature, photograph, or likeness in a commercial
41 medium shall not constitute a use for which consent is required under subdivision
42 (a) solely because the material containing the use is commercially sponsored or
43 contains paid advertising. Rather, it shall be a question of fact whether or not the

1 use of the deceased personality's name, voice, signature, photograph, or likeness
2 was so directly connected with the commercial sponsorship or with the paid
3 advertising as to constitute a use for which consent is required under subdivision
4 (a).

5 (l) Nothing in this section shall apply to the owners or employees of any
6 medium used for advertising, including, but not limited to, newspapers,
7 magazines, radio and television networks and stations, cable television systems,
8 billboards, and transit ads, by whom any advertisement or solicitation in violation
9 of this section is published or disseminated, unless it is established that the owners
10 or employees had knowledge of the unauthorized use of the deceased personality's
11 name, voice, signature, photograph, or likeness as prohibited by this section.

12 (m) The remedies provided for in this section are cumulative and shall be in
13 addition to any others provided for by law.

14 (n) This section shall apply to the adjudication of liability and the imposition of
15 any damages or other remedies in cases in which the liability, damages, and other
16 remedies arise from acts occurring directly in this state. For purposes of this
17 section, acts giving rise to liability shall be limited to the use, on or in products,
18 merchandise, goods, or services, or the advertising or selling, or soliciting
19 purchases of, products, merchandise, goods, or services prohibited by this section.

20 (o) This section shall be known and may be cited as the Astaire Celebrity Image
21 Protection Act.

22 **Comment.** Subdivision (i) of Section 3344.1 is amended to reflect advances in recording
23 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
24 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
25 technology," "audio recording," or "audio record," as context required).

26 **Code Civ. Proc. § 129 (amended). Reproduction of image of deceased person**

27 SEC. _____. Section 129 of the Code of the Civil Procedure is amended to read:

28 129. Notwithstanding any other provision of law, no copy, reproduction, or
29 facsimile of any kind shall be made of any photograph, negative, or print,
30 including instant photographs and video ~~tapes~~ recordings, of the body, or any
31 portion of the body, of a deceased person, taken by or for the coroner at the scene
32 of death or in the course of a post mortem examination or autopsy made by or
33 caused to be made by the coroner, except for use in a criminal action or
34 proceeding in this state which relates to the death of that person, or except as a
35 court of this state permits, by order after good cause has been shown and after
36 written notification of the request for the court order has been served, at least five
37 days before the order is made, upon the district attorney of the county in which the
38 post mortem examination or autopsy has been made or caused to be made.

39 This section shall not apply to the making of such a copy, reproduction, or
40 facsimile for use in the field of forensic pathology, for use in medical, or scientific
41 education or research, or for use by any law enforcement agency in this or any
42 other state or the United States.

1 This section shall apply to any such copy, reproduction, or facsimile, and to any
2 such photograph, negative, or print, heretofore or hereafter made.

3 **Comment.** Section 129 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Code Civ. Proc. § 1033.5 (amended). Allowable costs**

8 SEC. _____. Section 1033.5 of the Code of Civil Procedure is amended to read:

9 1033.5. (a) The following items are allowable as costs under Section 1032:

10 (1) Filing, motion, and jury fees.

11 (2) Juror food and lodging while they are kept together during trial and after the
12 jury retires for deliberation.

13 (3) Taking, ~~videotaping~~ video recording, and transcribing necessary depositions
14 including an original and one copy of those taken by the claimant and one copy of
15 depositions taken by the party against whom costs are allowed, and travel
16 expenses to attend depositions.

17 (4) Service of process by a public officer, registered process server, or other
18 means, as follows:

19 (A) When service is by a public officer, the recoverable cost is the fee
20 authorized by law at the time of service.

21 (B) If service is by a process server registered pursuant to Chapter 16
22 (commencing with Section 22350) of Division 8 of the Business and Professions
23 Code, the recoverable cost is the amount actually incurred in effecting service,
24 including, but not limited to, a stakeout or other means employed in locating the
25 person to be served, unless such charges are successfully challenged by a party to
26 the action.

27 (C) When service is by publication, the recoverable cost is the sum actually
28 incurred in effecting service.

29 (D) When service is by a means other than that set forth in subparagraph (A),
30 (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the
31 amount allowed to a public officer in this state for such service, except that the
32 court may allow the sum actually incurred in effecting service upon application
33 pursuant to paragraph (4) of subdivision (c).

34 (5) Expenses of attachment including keeper’s fees.

35 (6) Premiums on necessary surety bonds.

36 (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

37 (8) Fees of expert witnesses ordered by the court.

38 (9) Transcripts of court proceedings ordered by the court.

39 (10) Attorney fees, when authorized by any of the following:

40 (A) Contract.

41 (B) Statute.

42 (C) Law.

1 (11) Court reporters fees as established by statute.

2 (12) Models and blowups of exhibits and photocopies of exhibits may be
3 allowed if they were reasonably helpful to aid the trier of fact.

4 (13) Any other item that is required to be awarded to the prevailing party
5 pursuant to statute as an incident to prevailing in the action at trial or on appeal.

6 (b) The following items are not allowable as costs, except when expressly
7 authorized by law:

8 (1) Fees of experts not ordered by the court.

9 (2) Investigation expenses in preparing the case for trial.

10 (3) Postage, telephone, and photocopying charges, except for exhibits.

11 (4) Costs in investigation of jurors or in preparation for voir dire.

12 (5) Transcripts of court proceedings not ordered by the court.

13 (c) Any award of costs shall be subject to the following:

14 (1) Costs are allowable if incurred, whether or not paid.

15 (2) Allowable costs shall be reasonably necessary to the conduct of the litigation
16 rather than merely convenient or beneficial to its preparation.

17 (3) Allowable costs shall be reasonable in amount.

18 (4) Items not mentioned in this section and items assessed upon application may
19 be allowed or denied in the court's discretion.

20 (5) When any statute of this state refers to the award of "costs and attorney's
21 fees," attorney's fees are an item and component of the costs to be awarded and
22 are allowable as costs pursuant to subparagraph (B) of paragraph (10) of
23 subdivision (a). Any claim not based upon the court's established schedule of
24 attorney's fees for actions on a contract shall bear the burden of proof. Attorney's
25 fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of
26 subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time
27 a statement of decision is rendered, (C) upon application supported by affidavit
28 made concurrently with a claim for other costs, or (D) upon entry of default
29 judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C)
30 of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or
31 upon entry of a default judgment, unless otherwise provided by stipulation of the
32 parties.

33 Attorney's fees awarded pursuant to Section 1717 of the Civil Code are
34 allowable costs under Section 1032 as authorized by subparagraph (A) of
35 paragraph (10) of subdivision (a).

36 **Comment.** Subdivision (a)(3) of Section 1033.5 is amended to reflect advances in recording
37 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
38 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
39 technology," "audio recording," or "audio record," as context required).

40 **Code Civ. Proc. § 2025.560 (amended). Recording of deposition testimony**

41 SEC. _____. Section 2025.560 of the Code of Civil Procedure is amended to
42 read:

1 2025.560. (a) An audio or video ~~record~~ recording of deposition testimony made
2 by, or at the direction of, any party, including a certified ~~tape~~ recording made by
3 an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340,
4 shall not be filed with the court. Instead, the operator shall retain custody of that
5 ~~record~~ recording and shall store it under conditions that will protect it against loss,
6 destruction, or tampering, and preserve as far as practicable the quality of the
7 recording and the integrity of the testimony and images it contains.

8 (b) At the request of any party to the action, including a party who did not attend
9 the taking of the deposition testimony, or at the request of the deponent, that
10 operator shall promptly do both of the following:

11 (1) Permit the one making the request to hear or to view the recording on receipt
12 of payment of a reasonable charge for providing the facilities for hearing or
13 viewing the recording.

14 (2) Furnish a copy of the audio or video recording to the one making the request
15 on receipt of payment of the reasonable cost of making that copy of the recording.

16 (c) The attorney or operator who has custody of an audio or video ~~record~~
17 recording of deposition testimony made by, or at the direction of, any party, shall
18 retain custody of it until six months after final disposition of the action. At that
19 time, the audio or video recording may be destroyed or erased, unless the court, on
20 motion of any party and for good cause shown, orders that the recording be
21 preserved for a longer period.

22 **Comment.** Section 2025.560 is amended to reflect advances in recording technology and for
23 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
24 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
25 “audio recording,” or “audio record,” as context required).

26 **Educ. Code § 8971 (amended). Definitions**

27 SEC. _____. Section 8971 of the Education Code is amended to read:

28 8971. As used in this chapter, the following terms shall have the following
29 meanings:

30 (a) “Child development program” means a full-day or part-day comprehensive
31 developmental program for children ages 0 to 14 years that is administered by the
32 State Department of Education.

33 (b) “Early primary program,” means an integrated, experiential, and
34 developmentally appropriate educational program for children in preschool,
35 kindergarten, and grades 1 to 3, inclusive, that incorporates various instructional
36 strategies and authentic assessment practices, including educationally appropriate
37 curricula, heterogeneous groupings, active learning activities, oral language
38 development, small-group instruction, peer interaction, use of concrete
39 manipulative materials in the classroom, planned articulation among preschool,
40 kindergarten and primary grades, and parent involvement and education.

41 (c) “Integrated, experiential, and developmentally appropriate educational
42 program” means a program that is designed around the abilities and interests of the

1 children in the program and one in which children learn about the various subjects
2 simultaneously, as opposed to segmented courses, and through “hands-on” or
3 “active learning” teaching methods that are more appropriate for young children
4 than the academic “textbook” approach.

5 (d) “Preschool program” means a comprehensive developmental program for
6 children who are too young to enroll in kindergarten.

7 (e) “Portfolio material” means a selection of representative samples of the
8 child’s performance within the program setting that may include, but not be
9 limited to, teacher observations, work samples, developmental profiles,
10 photographs, and audio or video ~~tapes~~ recordings that present a picture of the
11 child’s progress over time.

12 (f) “School district” includes county offices of education.

13 (g) “State preschool program,” means a part-day comprehensive developmental
14 program for children three to five years of age from low-income families,
15 administered by the State Department of Education.

16 **Comment.** Subdivision (e) of Section 8971 is amended to reflect advances in recording
17 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
18 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
19 technology,” “audio recording,” or “audio record,” as context required).

20 **Educ. Code § 17002 (amended). Definitions**

21 SEC. _____. Section 17002 of the Education Code is amended to read:

22 17002. The following terms wherever used or referred to in this chapter, shall
23 have the following meanings, respectively, unless a different meaning appears
24 from the context:

25 (a) “Apportionment” means a reservation of funds necessary to finance the cost
26 of any project approved by the board for lease to an applicant school district.

27 (b) “Board” means the State Allocation Board.

28 (c) “Cost of project” includes, but is not limited to, the cost of all real estate
29 property rights, and easements acquired, and the cost of developing the site and
30 streets and utilities immediately adjacent thereto, the cost of construction,
31 reconstruction, or modernization of buildings and the furnishing and equipping,
32 including the purchase of educational technology hardware, of those buildings, the
33 supporting wiring and cabling, and the technological modernization of existing
34 buildings to support that hardware, the cost of plans, specifications, surveys, and
35 estimates of costs, and other expenses that are necessary or incidental to the
36 financing of the project. For purposes of this section, “educational technology
37 hardware” includes, but is not limited to, computers, telephones, televisions, and
38 video ~~cassette recorders~~ recording equipment.

39 (d) (1) “Good repair” means the facility is maintained in a manner that assures
40 that it is clean, safe, and functional as determined pursuant to a school facility
41 inspection and evaluation instrument developed by the Office of Public School
42 Construction and approved by the board or a local evaluation instrument that

1 meets the same criteria. Until the school facility inspection and evaluation
2 instrument is approved by the board, “good repair” means the facility is
3 maintained in a manner that assures that it is clean, safe, and functional as
4 determined by the interim evaluation instrument developed by the Office of Public
5 School Construction or a local evaluation instrument that meets the same criteria
6 as the interim evaluation instrument. The school facility inspection and evaluation
7 instrument and local evaluation instruments that meet the minimum criteria of this
8 subdivision shall not require capital enhancements beyond the standards to which
9 the facility was designed and constructed. In order to provide that school facilities
10 are reviewed to be clean, safe, and functional, the school facility inspection and
11 evaluation instrument and local evaluation instruments shall include at least the
12 following criteria:

13 (A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

14 (B) (i) Mechanical systems, including heating, ventilation, and air-conditioning
15 systems, are functional and unobstructed.

16 (ii) Appear to supply adequate amount of air to all classrooms, work spaces, and
17 facilities.

18 (iii) Maintain interior temperatures within normally acceptable ranges.

19 (C) Doors and windows are intact, functional and open, close, and lock as
20 designed, unless there is a valid reason they should not function as designed.

21 (D) Fences and gates are intact, functional, and free of holes and other
22 conditions that could present a safety hazard to pupils, staff, or others. Locks and
23 other security hardware function as designed.

24 (E) Interior surfaces, including walls, floors, and ceilings, are free of safety
25 hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water
26 damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of
27 mold or mildew.

28 (F) Hazardous and flammable materials are stored properly. No evidence of
29 peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or
30 asbestos exposure are evident. There is no apparent evidence of hazardous
31 materials that may pose a threat to the health and safety of pupils or staff.

32 (G) Structures, including posts, beams, supports for portable classrooms and
33 ramps, and other structural building members appear intact, secure, and functional
34 as designed. Ceilings and floors are not sloping or sagging beyond their intended
35 design. There is no visible evidence of severe cracks, dry rot, mold, or damage that
36 undermines structural components.

37 (H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all
38 emergency equipment and systems appear to be functioning properly. Fire alarm
39 pull stations are clearly visible. Fire extinguishers are current and placed in all
40 required areas, including every classroom and assembly area. Emergency exits are
41 clearly marked and unobstructed.

1 (I) Electrical systems, components, and equipment, including switches, junction
2 boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly
3 covered and guarded from pupil access, and appear to be working properly.

4 (J) Lighting appears to be adequate and working properly. Lights do not flicker,
5 dim, or malfunction, and there is no unusual hum or noise from light fixtures.
6 Exterior lights onsite appear to be working properly.

7 (K) No visible or odorous indicators of pest or vermin infestation are evident.

8 (L) Interior and exterior drinking fountains are functional, accessible, and free of
9 leaks. Drinking fountain water pressure is adequate. Fountain water is clear and
10 without unusual taste or odor, and moss, mold, or excessive staining is not evident.

11 (M) (i) Restrooms and restroom fixtures are functional.

12 (ii) Appear to be maintained and stocked with supplies regularly.

13 (iii) Appear to be accessible to pupils during the schoolday.

14 (iv) Appear to be in compliance with Section 35292.5.

15 (N) The sanitary sewer system controls odor as designed, displays no signs of
16 stoppage, backup, or flooding, in the facilities or on school grounds, and appears
17 to be functioning properly.

18 (O) Roofs, gutters, roof drains, and downspouts appear to be functioning
19 properly and are free of visible damage and evidence of disrepair when observed
20 from the ground inside and outside of the building.

21 (P) The school grounds do not exhibit signs of drainage problems, such as
22 visible evidence of flooded areas, eroded soil, water damage to asphalt
23 playgrounds or parking areas, or clogged storm drain inlets.

24 (Q) Playground equipment and exterior fixtures, seating, tables, and equipment
25 are functional and free of significant cracks, trip hazards, holes, deterioration that
26 affects functionality or safety, and other health and safety hazards.

27 (R) School grounds, fields, walkways, and parking lot surfaces are free of
28 significant cracks, trip hazards, holes, deterioration that affects functionality or
29 safety, and other health and safety hazards.

30 (S) Overall cleanliness of the school grounds, buildings, common areas, and
31 individual rooms demonstrates that all areas appear to have been cleaned
32 regularly, and are free of accumulated refuse and unabated graffiti. Restrooms,
33 drinking fountains, and food preparation or serving areas appear to have been
34 cleaned each day that the school is in session.

35 (2) (A) On or before January 1, 2007, the Office of Public School Construction
36 shall develop the school facility inspection and evaluation instrument and
37 instructions for users. The school facility inspection and evaluation instrument and
38 local evaluation instruments that meet the minimum criteria of this subdivision
39 shall include a system that will evaluate each facility, based on the criteria listed in
40 paragraph (1), on a scale of “good,” “fair,” or “poor,” as developed by the Office
41 of Public School Construction, and provide an overall summary of the conditions
42 at each school on a scale of “exemplary,” “good,” “fair,” or “poor.”

1 (B) On or before July 1, 2007, the Office of Public School Construction, in
2 consultation with county offices of education, shall define objective criteria for
3 determining the overall summary of the conditions of schools.

4 (C) For purposes of this paragraph, “users” means local educational agencies
5 that participate in either of the programs established pursuant to this chapter,
6 Chapter 12.5 (commencing with Section 17070.10), or Section 17582.

7 (e) “Lease” includes a lease with an option to purchase.

8 (f) “Project” means the facility being constructed or acquired by the state for
9 rental to the applicant school district and may include the reconstruction or
10 modernization of existing buildings, construction of new buildings, the grading
11 and development of sites, acquisition of sites therefor and any easements or rights-
12 of-way pertinent thereto or necessary for its full use including the development of
13 streets and utilities.

14 (g) “Property” includes all property, real, personal or mixed, tangible or
15 intangible, or any interest therein necessary or desirable for carrying out the
16 purposes of this chapter.

17 **Comment.** Subdivision (c) of Section 17002 is amended to reflect advances in recording
18 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
19 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
20 technology,” “audio recording,” or “audio record,” as context required).

21 **Educ. Code § 18032 (amended). Library policy regarding video recordings**

22 SEC. _____. Section 18032 of the Education Code is amended to read:

23 18032. (a) Every public library that receives state funds pursuant to this chapter
24 and that provides public access to ~~motion picture videotapes~~ video recordings
25 shall, by a majority vote of the governing board, adopt a policy regarding access
26 by minors to ~~motion picture videotapes~~ video recordings by January 1, 2000.

27 (b) Every public library that is required to adopt a policy pursuant to subdivision
28 (a) shall make that policy available to members of the public at every library
29 branch.

30 **Comment.** Section 18032 is amended to reflect advances in recording technology and for
31 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
32 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
33 “audio recording,” or “audio record,” as context required).

34 **Educ. Code § 19323 (amended). Loan of audio recordings**

35 SEC. _____. Section 19323 of the Education Code is amended to read:

36 19323. The State Librarian shall make available in the state on a loan basis to
37 legally blind persons, or to persons who are visually or physically handicapped to
38 such an extent that they are unable to read conventional printed materials, ~~in the~~
39 ~~state~~ tape audio recordings of books and other related materials. The ~~tape~~ audio
40 recordings shall be selected by the State Library on the same basis as the State
41 Library’s general program for providing library materials to legally blind readers.

1 **Comment.** Section 19323 is amended to reflect advances in recording technology and for
2 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
3 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
4 “audio recording,” or “audio record,” as context required).

5 The section is also amended to make a stylistic revision.

6 **Educ. Code § 32255 (amended). Definitions**

7 SEC. _____. Section 32255 of the Education Code is amended to read:

8 32255. As used in this chapter:

9 (a) “Animal” means any living organism of the kingdom animalia, beings that
10 typically differ from plants in capacity for spontaneous movement and rapid motor
11 response to stimulation by a usually greater mobility with some degree of
12 voluntary locomotor ability and by greater irritability commonly mediated through
13 a more or less centralized nervous system, beings that are characterized by a
14 requirement for complex organic nutrients including proteins or their constituents
15 that are usually digested in an internal cavity before assimilation into the body
16 proper, and beings that are distinguished from typical plants by lack of
17 chlorophyll, by an inability to perform photosynthesis, by cells that lack cellulose
18 walls, and by the frequent presence of discrete complex sense organs.

19 (b) “Alternative education project” includes, but is not limited to, the use of
20 video ~~tapes~~ recordings, models, films, books, and computers, which would provide
21 an alternate avenue for obtaining the knowledge, information, or experience
22 required by the course of study in question. “Alternative education project” also
23 includes “alternative test.”

24 (c) “Pupil” means a person under 18 years of age who is matriculated in a course
25 of instruction in an educational institution within the scope of Section 32255.5.
26 For the purpose of asserting the pupil’s rights and receiving any notice or response
27 pursuant to this chapter, “pupil” also includes the parents of the matriculated
28 minor.

29 **Comment.** Section 32255 is amended to reflect advances in recording technology and for
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
31 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
32 “audio recording,” or “audio record,” as context required).

33 **Educ. Code § 49091.10 (amended). Parental right of inspection**

34 SEC. _____. Section 49091.10 of the Education Code is amended to read:

35 49091.10. (a) All primary supplemental instructional materials and assessments,
36 including textbooks, teacher’s manuals, films, ~~tapes~~ audio and video recordings,
37 and software shall be compiled and stored by the classroom instructor and made
38 available promptly for inspection by a parent or guardian in a reasonable
39 timeframe or in accordance with procedures determined by the governing board of
40 the school district.

41 (b) A parent or guardian has the right to observe instruction and other school
42 activities that involve his or her child in accordance with procedures determined

1 by the governing board of the school district to ensure the safety of pupils and
2 school personnel and to prevent undue interference with instruction or harassment
3 of school personnel. Reasonable accommodation of parents and guardians shall be
4 considered by the governing board of the school district. Upon written request by
5 the parent or guardian, school officials shall arrange for the parental observation of
6 the requested class or classes or activities by that parent or guardian in a
7 reasonable timeframe and in accordance with procedures determined by the
8 governing board of the school district.

9 **Comment.** Section 49091.10 is amended to reflect advances in recording technology and for
10 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
11 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
12 “audio recording,” or “audio record,” as context required).

13 **Educ. Code § 52740 (amended). Instructional material relating to certain important**
14 **historical events**

15 SEC. _____. Section 52740 of the Education Code is amended to read:

16 52740. (a) It is the intent of the Legislature to provide accurate instructional
17 materials to schools on all of the following topics:

18 (1) The internment in the United States of persons of Japanese origin and its
19 impact on Japanese-American citizens.

20 (2) The Armenian genocide.

21 (3) The World War II internment, relocation, and restriction in the United States
22 of persons of Italian origin and its impact on the Italian-American community.

23 (b) The Legislature finds and declares that there are few films or ~~videotapes~~
24 video recordings available on the subjects of the internment of persons of Japanese
25 origin, the Armenian genocide, and the World War II internment, relocation, and
26 restriction of persons of Italian origin, for teachers to use when teaching pupils
27 about these three devastating events. The shortage of available films or ~~videotapes~~
28 video recordings on these subjects is especially true for the Armenian genocide.

29 (c) The Legislature hereby finds and declares that films and ~~videotapes~~ video
30 recordings giving a historically accurate depiction of the internment in the United
31 States of persons of Japanese origin during World War II, the Armenian genocide,
32 and the World War II internment, relocation, and restriction of persons of Italian
33 origin, should be made in order that pupils will recognize these events for the
34 horror they represented. The Legislature hereby encourages teachers to use these
35 films and ~~videotapes~~ video recordings as a resource in teaching pupils about these
36 three important historical events that are commonly overlooked in today’s school
37 curriculum.

38 **Comment.** Section 52740 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
41 “audio recording,” or “audio record,” as context required).

1 **Educ. Code § 52742 (amended). Review of films and video recordings**

2 SEC. _____. Section 52742 of the Education Code is amended to read:

3 52742. The films or video ~~tapes~~ recordings produced pursuant to this article
4 shall be submitted to the Curriculum Development and Supplemental Materials
5 Commission for its review, and may be made available to schools, as provided by
6 this article, only upon adoption by the Curriculum Development and Supplemental
7 Materials Commission.

8 **Comment.** Section 52742 is amended to reflect advances in recording technology and for
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
10 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
11 “audio recording,” or “audio record,” as context required).

12 **Educ. Code § 52743 (amended). Availability of films and video recordings**

13 SEC. _____. Section 52743 of the Education Code is amended to read:

14 52743. The State Department of Education shall make available the films or
15 video ~~tapes~~ recordings produced pursuant to this article to schools.

16 **Educ. Code § 56341.1 (amended). Individualized education programs**

17 SEC. _____. Section 56341.1 of the Education Code is amended to read:

18 56341.1. (a) When developing each pupil’s individualized education program,
19 the individualized education program team shall consider the following:

20 (1) The strengths of the pupil.

21 (2) The concerns of the parents or guardians for enhancing the education of the
22 pupil.

23 (3) The results of the initial assessment or most recent assessment of the pupil.

24 (4) The academic, developmental, and functional needs of the child.

25 (b) The individualized education program team shall do the following:

26 (1) In the case of a pupil whose behavior impedes his or her learning or that of
27 others, consider the use of positive behavioral interventions and supports, and
28 other strategies, to address that behavior.

29 (2) In the case of a pupil with limited-English proficiency, consider the language
30 needs of the pupil as those needs relate to the pupil’s individualized education
31 program.

32 (3) In the case of a pupil who is blind or visually impaired, provide for
33 instruction in braille, and the use of braille, unless the individualized education
34 program team determines, after an assessment of the pupil’s reading and writing
35 skills, needs, and appropriate reading and writing media, including an assessment
36 of the pupil’s future needs for instruction in braille or the use of braille, that
37 instruction in braille or the use of braille is not appropriate for the pupil.

38 (4) Consider the communication needs of the pupil, and in the case of a pupil
39 who is deaf or hard of hearing, consider the pupil’s language and communication
40 needs, opportunities for direct communications with peers and professional
41 personnel in the pupil’s language and communication mode, academic level, and

1 full range of needs, including opportunities for direct instruction in the pupil's
2 language and communication mode.

3 (5) Consider whether the pupil requires assistive technology devices and
4 services as defined in paragraphs (1) and (2) of Section 1401 of Title 20 of the
5 United States Code.

6 (c) If, in considering the special factors described in subdivisions (a) and (b), the
7 individualized education program team determines that a pupil needs a particular
8 device or service, including an intervention, accommodation, or other program
9 modification, in order for the pupil to receive a free appropriate public education,
10 the individualized education program team shall include a statement to that effect
11 in the pupil's individualized education program.

12 (d) The individualized education program team shall review the pupil's
13 individualized education program periodically, but not less frequently than
14 annually, to determine whether the annual goals for the pupil are being achieved,
15 and revise the individualized education program, as appropriate, to address among
16 other matters the following:

17 (1) Any lack of expected progress toward the annual goals and in the general
18 curriculum, where appropriate.

19 (2) The results of any reassessment conducted pursuant to Section 56381.

20 (3) Information about the pupil provided to, or by, the parents or guardians, as
21 described in subdivision (b) of Section 56381.

22 (4) The pupil's anticipated needs.

23 (5) Any other relevant matter.

24 (e) A regular education teacher of the pupil, who is a member of the
25 individualized education program team, shall participate in the review and revision
26 of the individualized education program of the pupil consistent with subparagraph
27 (C) of paragraph (1) of subsection (d) of Section 1414 of Title 20 of the United
28 States Code.

29 (f) The parent or guardian shall have the right to present information to the
30 individualized education program team in person or through a representative and
31 the right to participate in meetings, relating to eligibility for special education and
32 related services, recommendations, and program planning.

33 (g) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian,
34 or local educational agency shall have the right to audio record ~~electronically~~ the
35 proceedings of individualized education program team meetings ~~on an audiotape~~
36 ~~recorder~~. The parent or guardian, or local educational agency shall notify the
37 members of the individualized education program team of their intent to audio
38 record a meeting at least 24 hours prior to the meeting. If the local educational
39 agency initiates the notice of intent to ~~audiotape~~ audio record a meeting and the
40 parent or guardian objects or refuses to attend the meeting because it will be ~~tape~~
41 audio recorded, the meeting shall not be audio recorded ~~on an audiotape recorder~~.

42 (2) The Legislature hereby finds as follows:

1 (A) Under federal law, ~~audiotape~~ audio recordings made by a local educational
2 agency are subject to the federal Family Educational Rights and Privacy Act (20
3 U.S.C. Sec. 1232g), and are subject to the confidentiality requirements of the
4 regulations under Sections 300.560 to 300.575, inclusive, of ~~Part~~ Title 34 of the
5 Code of Federal Regulations.

6 (B) Parents or guardians have the right, pursuant to Sections 99.10 to 99.22,
7 inclusive, of Title 34 of the Code of Federal Regulations, to do all of the
8 following:

9 (i) Inspect and review the ~~tape~~ audio recordings.

10 (ii) Request that the ~~tape~~ audio recordings be amended if the parent or guardian
11 believes that they contain information that is inaccurate, misleading, or in
12 violation of the rights of privacy or other rights of the individual with exceptional
13 needs.

14 (iii) Challenge, in a hearing, information that the parent or guardian believes is
15 inaccurate, misleading, or in violation of the individual's rights of privacy or other
16 rights.

17 (h) It is the intent of the Legislature that the individualized education program
18 team meetings be nonadversarial and convened solely for the purpose of making
19 educational decisions for the good of the individual with exceptional needs.

20 **Comment.** Subdivision (g) of Section 56341.1 is amended to reflect advances in recording
21 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
22 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
23 technology," "audio recording," or "audio record," as context required).

24 Subdivision (g) is also amended to correct an erroneous cross reference.

25 **Educ. Code § 60204 (amended). Duties of commission**

26 SEC. _____. Section 60204 of the Education Code is amended to read:

27 60204. The commission shall:

28 (a) Recommend curriculum frameworks to the state board.

29 (b) Develop criteria for evaluating instructional materials submitted for adoption
30 so that the materials adopted shall adequately cover the subjects in the indicated
31 grade or grades and which comply with the provisions of Article 3 (commencing
32 with Section 60040) of Chapter 1. The criteria developed by the commission shall
33 be consistent with the duties of the state board pursuant to Section 60200. The
34 criteria shall be public information and shall be provided in written or printed form
35 to any person requesting such information.

36 (c) Study and evaluate instructional materials submitted for adoption.

37 (d) Recommend to the state board instructional materials which it approves for
38 adoption.

39 (e) Review and have the authority to adopt the educational films or ~~videotapes~~
40 video recordings produced in accordance with Article 3 (commencing with
41 Section 52740) of Chapter 11 of Part 28.

42 (f) Recommend to the state board policies and activities to assist the department
43 and school districts in the use of the curriculum framework and other available

1 model curriculum materials for the purpose of guiding and strengthening the
2 quality of instruction in the public schools.

3 **Comment.** Section 60204 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Educ. Code § 94975 (amended). Procedure for notice and hearing**

8 SEC. _____. Section 94975 of the Education Code is amended to read:

9 94975. (a) This section establishes the procedure for notice and hearing required
10 under this chapter and, except as provided in Section 94970, may be used in lieu
11 of other notice or hearing requirements provided in this chapter.

12 (b) If notice of administrative action is required by this chapter, the bureau shall
13 serve notice stating the following:

14 (1) The action, including the penalties and administrative sanctions sought.

15 (2) The grounds for the action with sufficient particularity to give notice of the
16 transactions, occurrences, violations, or other matters on which the action is based.

17 (3) The right to a hearing and the time period within which the party subject to
18 the notice may request a hearing in writing. The time period shall not be less than
19 15 days after service of the notice unless a longer period is provided by statute.

20 (4) The right to be present at the hearing, to be represented by counsel, to cross-
21 examine witnesses, and to present evidence.

22 (5) That, if the party subject to the notice does not request a hearing in writing
23 within the time period expressed in the notice, he or she will waive or forfeit his or
24 her right to an administrative hearing and the action will become final.

25 (c) If a party subject to a notice provided pursuant to subdivision (b) requests a
26 hearing in writing within the time period specified in subparagraph (3) of
27 paragraph (b), then within 30 days of receiving this request, the bureau shall
28 schedule a hearing. The hearing shall be held in a location determined pursuant to
29 Section 11508 of the Government Code. The bureau shall serve reasonable notice
30 of the time and place for the hearing at least 10 days before the hearing. The
31 bureau may continue the date of the hearing upon a showing of good cause.

32 (d) (1) Any party, including the bureau, may submit a written request to any
33 other party before the hearing to obtain the names and addresses of any person
34 who has personal knowledge, or who the party receiving the request claims to
35 have personal knowledge, of any of the transactions, occurrences, violations, or
36 other matters that are the basis of the administrative action. In addition, the
37 requesting party shall have the right to inspect and copy any written statement
38 made by that person and any writing, as defined by Section 250 of the Evidence
39 Code, or thing that is in the custody, or under the control, of the party receiving
40 the request and that is relevant and not privileged. This subdivision shall constitute
41 the exclusive method for prehearing discovery. However, nothing in this

1 paragraph shall affect the bureau's authority, at any time, to investigate, inspect,
2 monitor, or obtain and copy information under any provision of this chapter.

3 (2) The written request described in paragraph (1) shall be made before the
4 hearing and within 30 days of the service of the notice described in subdivision
5 (b). Each recipient of a request shall comply with the request within 15 days of its
6 service by providing the names and addresses requested and by producing at a
7 reasonable time at the bureau's office, or other mutually agreed reasonable place,
8 the requested writings and things. The bureau may extend the time for response
9 upon a showing of good cause.

10 (3) Except as provided in this paragraph, no party may introduce the testimony
11 or statement of any person or any writing or thing into evidence at the hearing if
12 that party failed to provide the name and address of the person or to produce the
13 writing or thing for inspection and copying as provided by this subdivision. A
14 party may introduce the testimony, statement, writing, or thing that was not
15 identified or produced as required herein only if there is no objection or if the
16 party establishes that the person, writing, or thing was unknown at the time when
17 the response was made to the written request, the party could not have informed
18 other parties within a reasonable time after learning of the existence of the person,
19 writing, or thing, and no party would be prejudiced by the introduction of the
20 evidence.

21 (e) Before the hearing has commenced, the bureau shall issue subpoenas at the
22 written request of any party for the attendance of witnesses or the production of
23 documents or other things in the custody or under the control of the person subject
24 to the subpoena. Subpoenas issued pursuant to this section are subject to Section
25 11510 of the Government Code.

26 (f) (1) The bureau shall designate an impartial hearing officer to conduct the
27 hearing. The hearing officer may administer oaths and affirmations, regulate the
28 course of the hearing, question witnesses, and otherwise investigate the issues,
29 take official notice according to the procedure provided in Division 4
30 (commencing with Section 450) of the Evidence Code of any technical or
31 educational matter in the bureau's special field of expertise and of any matter that
32 may be judicially noticed, set the time and place for continued hearings, fix the
33 time for the filing of briefs and other documents, direct any party to appear and
34 confer to consider the simplification of issues by consent, and prepare a statement
35 of decision.

36 (2) Neither a hearing officer nor any person who has a direct or indirect interest
37 in the outcome of the hearing shall communicate directly or indirectly with each
38 other regarding any issue involved in the hearing while the proceeding is pending
39 without notice and opportunity for all parties to participate in the communication.
40 A hearing officer who receives any ex parte communication shall immediately
41 disclose the communication to the bureau and all other parties. The bureau may
42 disqualify the hearing officer if necessary to eliminate the effect of the ex parte
43 communication. If the bureau finds that any party willfully violated, or caused the

1 violation of, this paragraph, the bureau shall enter that party's default and impose
2 the administrative sanction set forth in the notice provided pursuant to subdivision
3 (b).

4 (g) (1) Each party at the hearing shall be afforded an opportunity to present
5 evidence, respond to evidence presented by other parties, cross-examine, and
6 present written argument or, if permitted by the hearing officer, oral argument on
7 the issues involved in the hearing. The bureau may call any party as a witness who
8 may be examined as if under cross-examination.

9 (2) Each party may appear through its representative or through legal counsel.

10 (3) The technical rules relating to evidence and witnesses shall not apply.
11 However, only relevant evidence is admissible.

12 (4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall
13 be conducted in the English language. The proponent of any testimony to be
14 offered by a witness who is not proficient in English shall provide, at the
15 proponent's cost, an interpreter proficient in English and the language in which the
16 witness will testify.

17 (5) The hearing shall be audio recorded by ~~tape recording or other phonographic~~
18 ~~means~~ unless all parties agree to another method of recording the proceedings.

19 (6) (A) At any time 10 or more days before the hearing, any party may serve on
20 the other parties a copy of any declaration that the party proposes to introduce in
21 evidence.

22 (B) The declaration shall be accompanied by a notice indicating the date of
23 service of the notice and stating that the declarations will be offered into evidence,
24 the declarants will not be called as witnesses, and there will be no right of cross-
25 examination unless the party receiving the notice requests the right to cross-
26 examine, in writing, within seven days of the service of the declarations and
27 notice.

28 (C) If no request for cross-examination is served within seven days of the
29 service of the declarations and notice described in subparagraph (B), the right to
30 cross-examination is deemed waived and the declaration shall have the same effect
31 as if the declarant testified orally. Notwithstanding this paragraph, a declaration
32 may be admitted as hearsay evidence without cross-examination.

33 (7) Disposition of any issues involved in the hearing may be made by stipulation
34 or settlement.

35 (8) If a party fails to appear at a hearing, that party's default shall be taken and
36 the party shall be deemed to have waived the hearing and agreed to the
37 administrative action and the grounds for that action described in the notice given
38 pursuant to subdivision (b). The bureau shall serve the party with an order of
39 default including the administrative action ordered. The order shall be effective
40 upon service or at any other time designated by the bureau. The bureau may
41 relieve a party from an order of default if the party applies for relief within 15 days
42 after the service of an order of default and establishes good cause for relief. An

1 application for relief from default shall not stay the effective date of the order
2 unless expressly provided by the bureau.

3 (h) (1) At any time before the matter is submitted for decision, the bureau may
4 amend the notice provided pursuant to subdivision (b) to set forth any further
5 grounds for the originally noticed administrative action or any additional
6 administrative action and the grounds therefor. The statement of the further
7 grounds for the originally noticed administrative action, or of the grounds for any
8 additional administrative action, shall be made with sufficient particularity to give
9 notice of the transactions, occurrences, violations, or other matters on which the
10 action or additional action is based. The amended notice shall be served on all
11 parties. All parties affected by the amended notice shall be given reasonable
12 opportunity to respond to the amended notice as provided in this section.

13 (2) The bureau may amend the notice after the case is submitted for decision.
14 The bureau shall serve each party with notice of the intended amendment, and
15 shall provide the party with an opportunity to show that the party will be
16 prejudiced by the amendment unless the case is reopened to permit the party to
17 introduce additional evidence. If prejudice is shown, the bureau shall reopen the
18 case to permit the introduction of additional evidence.

19 (i) (1) Within 30 days after the conclusion of the hearing or at another time
20 established by the bureau, the hearing officer shall submit a written statement of
21 decision setting forth a recommendation for a final decision and explaining the
22 factual and legal basis for the decision as to each of the grounds for the
23 administrative action set forth in the notice or amended notice. The bureau shall
24 serve the hearing officer's statement of decision on each party and its counsel
25 within 10 days of its submission by the hearing officer.

26 (2) The director shall make the final decision which shall be based exclusively
27 on evidence introduced at the hearing. The final decision shall be supported by
28 substantial evidence in the record. The director also shall issue a statement of
29 decision explaining the factual and legal basis for the final decision as to each of
30 the grounds for the administrative action set forth in the notice or amended notice.
31 The director shall issue an order based on its decision which shall be effective
32 upon service or at any other time designated by the director. The director, or his or
33 her agent, shall serve a copy of the final decision and order, within 10 days of their
34 issuance, on each party and its counsel.

35 (3) The bureau shall serve a certified copy of the complete record of the hearing,
36 or any part thereof designated by a party, within 30 days after receiving the party's
37 written request and payment of the cost of preparing the requested portions of the
38 record. The complete record shall include all notices and orders issued by the
39 bureau, a transcript of the hearing, the exhibits admitted or rejected, the written
40 evidence and any other papers in the case, the hearing officer's statement of
41 decision, and the final decision and order.

1 (j) The bureau shall serve all notices and other documents that are required to be
2 served by this section on each party by personal delivery, by certified mail, return
3 receipt requested, or by any other means designated by the bureau.

4 (k) (1) Any party aggrieved by the director's final decision and order may seek
5 judicial review by filing a petition for a writ of mandate pursuant to Section 1085
6 of the Code of Civil Procedure within 30 days of the issuance of the final decision
7 and order. If review is not sought within that period, the party's right to review
8 shall be deemed waived.

9 (2) The aggrieved party shall present the complete record of the hearing or all
10 portions of the record necessary for the court's review of the director's final
11 decision and order. The court shall deny the petition for a writ of mandate if the
12 record submitted by the party is incomplete. The court shall not consider any
13 matter not contained in the record. The director's findings of fact and legal
14 conclusions supporting the final decision shall be conclusive if supported by
15 substantial evidence on the record considered as a whole.

16 (3) The final order shall not be stayed or enjoined during review except upon the
17 court's grant of an order on a party's application after due notice to the director
18 and the Attorney General. The order shall be granted only if the party establishes
19 the substantial likelihood that it will prevail on the merits and posts a bond
20 sufficient to protect fully the interests of the students, the bureau, and the fund,
21 from any loss.

22 (l) The bureau may adopt regulations establishing alternative means of providing
23 notice and an opportunity to be heard in circumstances in which a full hearing is
24 not required by law.

25 (m) For the purposes of this section, "good cause" shall require sufficient
26 ground or reason for the determination to be made by the bureau.

27 **Comment.** Subdivision (g)(5) of Section 94975 is amended to reflect advances in recording
28 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
29 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
30 technology," "audio recording," or "audio record," as context required).

31 **Elec. Code § 2052 (amended). Visually impaired individuals**

32 SEC. _____. Section 2052 of the Election Code is amended to read:

33 2052. It is the intent of the Legislature to promote the fundamental right to vote
34 of visually impaired individuals, and to make efforts to improve public awareness
35 of the availability of ballot pamphlet ~~cassette tapes~~ audio recordings and improve
36 their delivery to these voters.

37 **Comment.** Section 2052 is amended to reflect advances in recording technology and for
38 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
39 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
40 "audio recording," or "audio record," as context required).

41 **Elec. Code § 2053 (amended). Visually Impaired Voter Assistance Advisory Board**

42 SEC. _____. Section 2053 of the Election Code is amended to read:

1 2053. (a) The Secretary of State shall establish a Visually Impaired Voter
2 Assistance Advisory Board. This board shall consist of the Secretary of State or
3 his or her designee and the following membership, appointed by the Secretary of
4 State:

5 (1) A representative from the State Advisory Council on Libraries.

6 (2) One member from each of three private organizations. Two of the
7 organizations shall be representative of organizations for blind persons in the state.

8 (b) The board shall do all of the following:

9 (1) Establish guidelines for reaching as many visually impaired persons as
10 practical.

11 (2) Make recommendations to the Secretary of State for improving the
12 availability and accessibility of ballot pamphlet ~~cassette tapes~~ audio recordings
13 and their delivery to visually impaired voters. The Secretary of State may
14 implement the recommendations made by the board.

15 (3) Increase the distribution of public service announcements identifying the
16 availability of ballot pamphlet ~~cassette tapes~~ audio recordings at least 45 days
17 before any federal, state, and local election.

18 (4) Promote the Secretary of State's toll-free voter registration telephone line for
19 citizens needing voter registration information, including information for those
20 who are visually handicapped, and the toll-free telephone service regarding the
21 California State Library and regional library service for the visually impaired.

22 (c) No member shall receive compensation, but each member shall be
23 reimbursed for his or her reasonable and necessary expenses in connection with
24 service on the board.

25 **Comment.** Section 2053 is amended to reflect advances in recording technology and for
26 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
27 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
28 "audio recording," or "audio record," as context required).

29 **Elec. Code § 9082.5 (amended). Audio recording of state ballot pamphlet**

30 SEC. _____. Section 9082.5 of the Election Code is amended to read:

31 9082.5. The Secretary of State shall cause to be produced an ~~audiocassette~~ audio
32 recorded version of the state ballot pamphlet. This audio recorded ~~cassette~~ version
33 shall be made available in quantities to be determined by the Secretary of State
34 and shall contain an impartial summary, arguments for and against, rebuttal
35 arguments, and other information concerning each measure that the Secretary of
36 State determines will make the ~~cassette~~ audio recorded version of the state ballot
37 pamphlet easier to understand or more useful to the average voter.

38 **Comment.** Section 9082.5 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
41 "audio recording," or "audio record," as context required).

1 **Elec. Code § 18541 (amended). Dissuading voters**

2 SEC. _____. Section 18541 of the Election Code is amended to read:

3 18541. (a) No person shall, with the intent of dissuading another person from
4 voting, within 100 feet of a polling place, do any of the following:

5 (1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

6 (2) Place a sign relating to voters' qualifications or speak to a voter on the
7 subject of his or her qualifications except as provided in Section 14240.

8 (3) Photograph, ~~videotape~~ video record, or otherwise record a voter entering or
9 exiting a polling place.

10 (b) Any violation of this section is punishable by imprisonment in a county jail
11 for not more than 12 months, or in the state prison. Any person who conspires to
12 violate this section is guilty of a felony.

13 (c) For purposes of this section, 100 feet means a distance of 100 feet from the
14 room or rooms in which voters are signing the roster and casting ballots.

15 **Comment.** Section 18541 is amended to reflect advances in recording technology and for
16 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
17 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
18 "audio recording," or "audio record," as context required).

19 **Evid. Code § 795 (amended). Professional competency examination**

20 SEC. _____. Section 795 of the Evidence Code is amended to read:

21 795. (a) The testimony of a witness is not inadmissible in a criminal proceeding
22 by reason of the fact that the witness has previously undergone hypnosis for the
23 purpose of recalling events which are the subject of the witness' testimony, if all
24 of the following conditions are met:

25 (1) The testimony is limited to those matters which the witness recalled and
26 related prior to the hypnosis.

27 (2) The substance of the prehypnotic memory was preserved in ~~written,~~
28 ~~audiotape, or videotape form~~ a writing, audio recording, or video recording prior
29 to the hypnosis.

30 (3) The hypnosis was conducted in accordance with all of the following
31 procedures:

32 (A) A written record was made prior to hypnosis documenting the subject's
33 description of the event, and information which was provided to the hypnotist
34 concerning the subject matter of the hypnosis.

35 (B) The subject gave informed consent to the hypnosis.

36 (C) The hypnosis session, including the pre- and post-hypnosis interviews, was
37 ~~videotape~~ video recorded for subsequent review.

38 (D) The hypnosis was performed by a licensed medical doctor, psychologist,
39 licensed clinical social worker, or a licensed marriage and family therapist
40 experienced in the use of hypnosis and independent of and not in the presence of
41 law enforcement, the prosecution, or the defense.

1 (4) Prior to admission of the testimony, the court holds a hearing pursuant to
2 Section 402 of the Evidence Code at which the proponent of the evidence proves
3 by clear and convincing evidence that the hypnosis did not so affect the witness as
4 to render the witness' prehypnosis recollection unreliable or to substantially impair
5 the ability to cross-examine the witness concerning the witness' prehypnosis
6 recollection. At the hearing, each side shall have the right to present expert
7 testimony and to cross-examine witnesses.

8 (b) Nothing in this section shall be construed to limit the ability of a party to
9 attack the credibility of a witness who has undergone hypnosis, or to limit other
10 legal grounds to admit or exclude the testimony of that witness.

11 **Comment.** Section 795 is amended to reflect advances in recording technology and for
12 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
13 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
14 "audio recording," or "audio record," as context required).

15 **Evid. Code § 1118 (amended). Oral agreement**

16 SEC. _____. Section 1118 of the Evidence Code is amended to read:

17 1118. An oral agreement "in accordance with Section 1118" means an oral
18 agreement that satisfies all of the following conditions:

19 (a) The oral agreement is recorded by a court reporter, ~~tape recorder,~~ or other
20 reliable means of ~~sound~~ audio recording.

21 (b) The terms of the oral agreement are recited on the record in the presence of
22 the parties and the mediator, and the parties express on the record that they agree
23 to the terms recited.

24 (c) The parties to the oral agreement expressly state on the record that the
25 agreement is enforceable or binding or words to that effect.

26 (d) The recording is reduced to writing and the writing is signed by the parties
27 within 72 hours after it is recorded.

28 **Comment.** Section 1118 is amended to reflect advances in recording technology and for
29 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
30 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
31 "audio recording," or "audio record," as context required).

32 **Evid. Code § 1294 (amended). Prior inconsistent statement**

33 SEC. _____. Section 1294 of the Evidence Code is amended to read:

34 1294. (a) The following evidence of prior inconsistent statements of a witness
35 properly admitted in a preliminary hearing or trial of the same criminal matter
36 pursuant to Section 1235 is not made inadmissible by the hearsay rule if the
37 witness is unavailable and former testimony of the witness is admitted pursuant to
38 Section 1291:

39 (1) A ~~videotaped~~ video recorded statement introduced at a preliminary hearing
40 or prior proceeding concerning the same criminal matter.

41 (2) A transcript, containing the statements, of the preliminary hearing or prior
42 proceeding concerning the same criminal matter.

1 (b) The party against whom the prior inconsistent statements are offered, at his
2 or her option, may examine or cross-examine any person who testified at the
3 preliminary hearing or prior proceeding as to the prior inconsistent statements of
4 the witness.

5 **Comment.** Section 1294 is amended to reflect advances in recording technology and for
6 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
7 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
8 “audio recording,” or “audio record,” as context required).

9 **Fam. Code § 3170 (amended). Custody or visitation issues**

10 SEC. _____. Section 3170 of the Family Code is amended to read:

11 3170. (a) If it appears on the face of a petition, application, or other pleading to
12 obtain or modify a temporary or permanent custody or visitation order that
13 custody, visitation, or both are contested, the court shall set the contested issues
14 for mediation.

15 (b) Domestic violence cases shall be handled by Family Court Services in
16 accordance with a separate written protocol approved by the Judicial Council. The
17 Judicial Council shall adopt guidelines for services, other than services provided
18 under this chapter, that counties may offer to parents who have been unable to
19 resolve their disputes. These services may include, but are not limited to, parent
20 education programs, booklets, ~~videotapes~~ video recordings, or referrals to
21 additional community resources.

22 **Comment.** Section 3170 is amended to reflect advances in recording technology and for
23 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
24 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
25 “audio recording,” or “audio record,” as context required).

26 **Fam. Code § 7572 (amended). Written informational material**

27 SEC. _____. Section 7572 of the Family Code is amended to read:

28 7572. (a) The Department of Child Support Services, in consultation with the
29 State Department of Health Services, the California Association of Hospitals and
30 Health Systems, and other affected health provider organizations, shall work
31 cooperatively to develop written materials to assist providers and parents in
32 complying with this chapter. This written material shall be updated periodically by
33 the Department of Child Support Services to reflect changes in law, procedures, or
34 public need.

35 (b) The written materials for parents which shall be attached to the form
36 specified in Section 7574 and provided to unmarried parents shall contain the
37 following information:

38 (1) A signed voluntary declaration of paternity that is filed with the Department
39 of Child Support Services legally establishes paternity.

40 (2) The legal rights and obligations of both parents and the child that result from
41 the establishment of paternity.

1 (3) An alleged father's constitutional rights to have the issue of paternity
2 decided by a court; to notice of any hearing on the issue of paternity; to have an
3 opportunity to present his case to the court, including his right to present and
4 cross-examine witnesses; to have an attorney represent him; and to have an
5 attorney appointed to represent him if he cannot afford one in a paternity action
6 filed by a local child support agency.

7 (4) That by signing the voluntary declaration of paternity, the father is
8 voluntarily waiving his constitutional rights.

9 (c) Parents shall also be given oral notice of the rights and responsibilities
10 specified in subdivision (b). Oral notice may be accomplished through the use of
11 audio or ~~videotape~~ video recorded programs developed by the Department of
12 Child Support Services to the extent permitted by federal law.

13 (d) The Department of Child Support Services shall, free of charge, make
14 available to hospitals, clinics, and other places of birth any and all informational
15 and training materials for the program under this chapter, as well as the paternity
16 declaration form. The Department of Child Support Services shall make training
17 available to every participating hospital, clinic, local registrar of births and deaths,
18 and other place of birth no later than June 30, 1999.

19 (e) The Department of Child Support Services may adopt regulations, including
20 emergency regulations, necessary to implement this chapter.

21 **Comment.** Subdivision (c) of Section 7572 is amended to reflect advances in recording
22 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
23 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
24 technology," "audio recording," or "audio record," as context required).

25 **Fam. Code § 10005 (amended). Additional duties of family law facilitator**

26 SEC. _____. Section 10005 of the Family Code is amended to read:

27 10005. (a) By local rule, the superior court may designate additional duties of
28 the family law facilitator, which may include, but are not limited to, the following:

29 (1) Meeting with litigants to mediate issues of child support, spousal support,
30 and maintenance of health insurance, subject to Section 10012. Actions in which
31 one or both of the parties are unrepresented by counsel shall have priority.

32 (2) Drafting stipulations to include all issues agreed to by the parties, which may
33 include issues other than those specified in Section 10003.

34 (3) If the parties are unable to resolve issues with the assistance of the family
35 law facilitator, prior to or at the hearing, and at the request of the court, the family
36 law facilitator shall review the paperwork, examine documents, prepare support
37 schedules, and advise the judge whether or not the matter is ready to proceed.

38 (4) Assisting the clerk in maintaining records.

39 (5) Preparing formal orders consistent with the court's announced order in cases
40 where both parties are unrepresented.

41 (6) Serving as a special master in proceedings and making findings to the court
42 unless he or she has served as a mediator in that case.

1 (7) Providing the services specified in Division 15 (commencing with Section
2 10100). Except for the funding specifically designated for visitation programs
3 pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child
4 support funds shall not be used to fund the services specified in Division 15
5 (commencing with Section 10100).

6 (8) Providing the services specified in Section 10004 concerning the issues of
7 child custody and visitation as they relate to calculating child support, if funding is
8 provided for that purpose.

9 (b) If staff and other resources are available and the duties listed in subdivision
10 (a) have been accomplished, the duties of the family law facilitator may also
11 include the following:

12 (1) Assisting the court with research and any other responsibilities which will
13 enable the court to be responsive to the litigants' needs.

14 (2) Developing programs for bar and community outreach through day and
15 evening programs, ~~videotapes~~ video recordings, and other innovative means that
16 will assist unrepresented and financially disadvantaged litigants in gaining
17 meaningful access to family court. These programs shall specifically include
18 information concerning underutilized legislation, such as expedited child support
19 orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), and
20 preexisting, court-sponsored programs, such as supervised visitation and
21 appointment of attorneys for children.

22 **Comment.** Subdivision (b)(2) of Section 10005 is amended to reflect advances in recording
23 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
24 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
25 technology," "audio recording," or "audio record," as context required).

26 **Fam. Code § 20034 (amended). Duties of Attorney-Mediator**

27 SEC. _____. Section 20034 of the Family Code is amended to read:

28 20034. (a) An attorney, known as an Attorney-Mediator, shall be hired to assist
29 the court in resolving child and spousal support disputes, to develop community
30 outreach programs, and to undertake other duties as assigned by the court.

31 (b) The Attorney-Mediator shall be an attorney, licensed to practice in this state,
32 with mediation or litigation experience, or both, in the field of family law.

33 (c) By local rule, the superior court may designate the duties of the Attorney-
34 Mediator, which may include, but are not limited to, the following:

35 (1) Meeting with litigants to mediate issues of child support, spousal support,
36 and maintenance of health insurance. Actions in which one or both of the parties
37 are unrepresented by counsel shall have priority.

38 (2) Preparing support schedules based on statutory guidelines accessed through
39 existing up-to-date computer technology.

40 (3) Drafting stipulations to include all issues agreed to by the parties, which may
41 include issues other than those specified in Section 20031.

1 (4) If the parties are unable to resolve issues with the assistance of the Attorney-
2 Mediator, prior to or at the hearing, and at the request of the court, the Attorney-
3 Mediator shall review the paperwork, examine documents, prepare support
4 schedules, and advise the judge whether or not the matter is ready to proceed.

5 (5) Assisting the clerk in maintaining records.

6 (6) Preparing formal orders consistent with the court's announced order in cases
7 where both parties are unrepresented.

8 (7) Serving as a special master to hearing proceedings and making findings to
9 the court unless he or she has served as a mediator in that case.

10 (8) Assisting the court with research and any other responsibilities which will
11 enable the court to be responsive to the litigants' needs.

12 (9) Developing programs for bar and community outreach through day and
13 evening programs, ~~videotapes~~ video recordings, and other innovative means that
14 will assist unrepresented and financially disadvantaged litigants in gaining
15 meaningful access to Family Court. These programs shall specifically include
16 information concerning underutilized legislation, such as expedited temporary
17 support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division
18 9), modification of support orders (Article 3 (commencing with Section 3680) of
19 Chapter 6 of Part 1 of Division 9) and preexisting, court-sponsored programs, such
20 as supervised visitation and appointment of attorneys for children.

21 (d) The court shall develop a protocol wherein all litigants, both unrepresented
22 by counsel and represented by counsel, have ultimate access to a hearing before
23 the court.

24 **Comment.** Subdivision (c)(9) of Section 20034 is amended to reflect advances in recording
25 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
26 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
27 technology," "audio recording," or "audio record," as context required).

28 **Gov't Code § 8880.30 (amended). Regulations for determining lottery winners**

29 SEC. _____. Section 8888.30 of the Government Code is amended to read:

30 8880.30. The Commission shall promulgate regulations that specify the method
31 for determining winners in each lottery game, provided:

32 (a) A lottery game may be based on the results of a horse race with the consent
33 of the association conducting the race and the California Horse Racing Board. Any
34 compensation received by an association for the use of its races to determine the
35 winners of a lottery game shall be divided equally between commissions and
36 purses.

37 (b) If a lottery game utilizes a drawing of winning numbers, a drawing among
38 entries, or a drawing among finalists, the drawings shall always be open to the
39 public. No manual or physical selection in the drawings shall be conducted by any
40 employee of the Lottery. Except for computer automated drawings, drawings shall
41 be witnessed by an independent lottery contractor having qualifications
42 established by the Commission. Any equipment used in the drawings shall be

1 inspected by the independent lottery contractor and an employee of the Lottery
2 both before and after the drawings. The drawings and the inspections shall be both
3 audio and video recorded ~~on both videotape and audiotape~~.

4 (c) It is the intent of this chapter that the Commission may use any of a variety
5 of existing or future methods or technologies in determining winners.

6 **Comment.** Section 8880.30 is amended to reflect advances in recording technology and for
7 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
8 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
9 “audio recording,” or “audio record,” as context required).

10 **Gov’t Code § 11124.1 (amended). Recording of public meeting**

11 SEC. _____. Section 11124.1 of the Government Code is amended to read:

12 11124.1. (a) Any person attending an open and public meeting of the state body
13 shall have the right to record the proceedings with an audio or video ~~tape~~ recorder
14 or a still or motion picture camera in the absence of a reasonable finding by the
15 state body that the recording cannot continue without noise, illumination, or
16 obstruction of view that constitutes, or would constitute, a persistent disruption of
17 the proceedings.

18 (b) Any ~~tape or film record~~ audio or video recording of an open and public
19 meeting made for whatever purpose by or at the direction of the state body shall be
20 subject to inspection pursuant to the California Public Records Act (Chapter 3.5
21 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or
22 destroyed 30 days after the ~~taping or~~ recording. Any inspection of an ~~audio or~~
23 ~~video tape~~ audio or video recording shall be provided without charge on ~~an audio~~
24 ~~or video tape player~~ equipment made available by the state body.

25 (c) No state body shall prohibit or otherwise restrict the broadcast of its open
26 and public meetings in the absence of a reasonable finding that the broadcast
27 cannot be accomplished without noise, illumination, or obstruction of view that
28 would constitute a persistent disruption of the proceedings.

29 **Comment.** Section 11124.1 is amended to reflect advances in recording technology and for
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
31 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
32 “audio recording,” or “audio record,” as context required).

33 **Gov’t Code § 11130 (amended). Action to stop or prevent violation of meeting provision**

34 SEC. _____. Section 11130 of the Government Code is amended to read:

35 11130. (a) The Attorney General, the district attorney, or any interested person
36 may commence an action by mandamus, injunction, or declaratory relief for the
37 purpose of stopping or preventing violations or threatened violations of this article
38 or to determine the applicability of this article to past actions or threatened future
39 action by members of the state body or to determine whether any rule or action by
40 the state body to penalize or otherwise discourage the expression of one or more of
41 its members is valid or invalid under the laws of this state or of the United States,

1 or to compel the state body to ~~tape~~ audio record its closed sessions as hereinafter
2 provided.

3 (b) The court in its discretion may, upon a judgment of a violation of Section
4 11126, order the state body to ~~tape~~ audio record its closed sessions and preserve
5 the ~~tape~~ audio recordings for the period and under the terms of security and
6 confidentiality the court deems appropriate.

7 (c) (1) Each recording so kept shall be immediately labeled with the date of the
8 closed session recorded and the title of the clerk or other officer who shall be
9 custodian of the recording.

10 (2) The ~~tapes~~ audio recordings shall be subject to the following discovery
11 procedures:

12 (A) In any case in which discovery or disclosure of the ~~tape~~ audio recording is
13 sought by the Attorney General, the district attorney, or the plaintiff in a civil
14 action pursuant to this section or Section 11130.3 alleging that a violation of this
15 article has occurred in a closed session that has been recorded pursuant to this
16 section, the party seeking discovery or disclosure shall file a written notice of
17 motion with the appropriate court with notice to the governmental agency that has
18 custody and control of the ~~tape~~ audio recording. The notice shall be given pursuant
19 to subdivision (b) of Section 1005 of the Code of Civil Procedure.

20 (B) The notice shall include, in addition to the items required by Section 1010 of
21 the Code of Civil Procedure, all of the following:

22 (i) Identification of the proceeding in which discovery or disclosure is sought,
23 the party seeking discovery or disclosure, the date and time of the meeting
24 recorded, and the governmental agency that has custody and control of the
25 recording.

26 (ii) An affidavit that contains specific facts indicating that a violation of the act
27 occurred in the closed session.

28 (3) If the court, following a review of the motion, finds that there is good cause
29 to believe that a violation has occurred, the court may review, in camera, the
30 recording of that portion of the closed session alleged to have violated the act.

31 (4) If, following the in-camera review, the court concludes that disclosure of a
32 portion of the recording would be likely to materially assist in the resolution of the
33 litigation alleging violation of this article, the court shall, in its discretion, make a
34 certified transcript of the portion of the recording a public exhibit in the
35 proceeding.

36 (5) Nothing in this section shall permit discovery of communications that are
37 protected by the attorney-client privilege.

38 **Comment.** Section 11130 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
41 “audio recording,” or “audio record,” as context required).

42 **Note.** This section authorizes a court to order a state body to tape record closed sessions of its
43 meetings, and preserve the recordings for potential future disclosure, following a judgment that
44 the body has violated Section 11126 (governing conducting of closed sessions of public

1 meetings). The Commission invites comment from the Attorney General and other interested
2 persons on whether allowing this recording by means of technology that does not use tape would
3 cause any problems relating to preservation of the recording.

4 **Gov't Code § 12811.3 (amended). Employee transfer**

5 SEC. _____. Section 12811.3 of the Government Code is amended to read:

6 12811.3. (a) Notwithstanding any other provision of law and subject to the
7 provisions of subdivision (i), any employee of a department, board, or commission
8 under the jurisdiction of the Youth and Adult Correctional Agency, who is
9 designated as a peace officer described in Chapter 4.5 (commencing with Section
10 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current
11 position to another department, board, or commission under the jurisdiction of the
12 Youth and Adult Correctional Agency.

13 (b) Any peace officer who desires to transfer to another department, board, or
14 commission pursuant to subdivision (a), and who is prohibited from carrying a
15 firearm pursuant to paragraph (8) of subdivision (g) of Section 922 of Title 18 of
16 the United States Code or Section 12021 of the Penal Code may not transfer to a
17 department, board, or commission that requires the use of a firearm.

18 (c) Any peace officer who desires to transfer to another department, board, or
19 commission pursuant to subdivision (a) to a position requiring the ability to carry a
20 firearm, as determined by the department, board, or commission, and who has not
21 completed the required training pursuant to Section 832 of the Penal Code, shall
22 successfully complete the required training before appointment to his or her new
23 peace officer position.

24 (d) (1) Any peace officer who desires to transfer shall not be required to undergo
25 a psychological screening pursuant to subdivision (f) of Section 1031 or
26 subdivision (a) of Section 13601 of the Penal Code, unless the Secretary of the
27 Youth and Adult Correctional Agency, or his or her designee, makes a
28 determination that a peace officer is required to undergo all or a portion of a
29 psychological screening as described in subdivision (f) of Section 1031 of this
30 code or subdivision (a) of Section 13601 of the Penal Code.

31 (2) The Secretary of the Youth and Adult Correctional Agency shall promulgate
32 emergency regulations in order to implement paragraph (1). Notwithstanding
33 subdivision (b) of Section 11346.1, no showing of an emergency shall be
34 necessary in order to adopt, amend, or repeal the emergency regulations required
35 by this paragraph.

36 (e) Any peace officer who has successfully completed a course of training
37 pursuant to Section 13602 of the Penal Code and who transfers to another
38 department, board, or commission pursuant to subdivision (a) shall not be required
39 to complete a new course of training pursuant to Section 13602 of the Penal Code.
40 However, each department, board, or commission may prescribe additional
41 training to be provided to an employee who transfers pursuant to subdivision (a)

1 and shall provide that training within the first six months of appointment to his or
2 her new peace officer position.

3 (f) Any peace officer who desires to transfer to another department, board, or
4 commission pursuant to subdivision (a) shall not be required to undergo a new
5 background investigation pursuant to Section 1029.1.

6 (g) Nothing in this section shall affect an employee's seniority calculation as
7 provided for under current law or any memorandum of understanding between the
8 state and any applicable bargaining unit agreement in effect upon the effective
9 date of this section.

10 (h) The provisions of the Unit 6 Memorandum of Understanding, which expires
11 July 2, 2006, as modified by the ratified addendum dated June 30, 2004, relating to
12 the release of copies of ~~videotaped~~ video recorded incidents, shall be subject to the
13 California Public Records Act.

14 (i) This section shall become operative only when the Secretary of the Youth
15 and Adult Correctional Agency certifies in writing that it is necessary to prevent or
16 minimize employment actions, including, but not limited to, layoffs, demotions,
17 reductions in time base, or involuntary transfers of employees. In addition, the
18 Secretary of the Youth and Adult Correctional Agency shall have the sole
19 authority to designate any or all departments, boards, or commissions eligible to
20 have its peace officer employees transfer pursuant to subdivision (a) and any or all
21 departments, boards, or commissions that shall accept peace officer employees
22 under this section.

23 **Comment.** Section 12811.3 is amended to reflect advances in recording technology and for
24 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
25 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
26 "audio recording," or "audio record," as context required).

27 **Gov't Code § 14999.31 (amended). Permit to engage in film production**

28 SEC. _____. Section 14999.31 of the Government Code is amended to read:

29 14999.31. The Film Office and its director shall encourage the use of the
30 uniform application form described in Section 14999.32 for obtaining a local
31 permit to engage in film production within the jurisdiction of a county, city, or city
32 and county. As used in this chapter "film" includes, but is not limited to, feature
33 motion pictures, ~~videotapes~~ video recordings, television motion pictures,
34 commercials, and stills. "Production" means the activity of making a film for
35 commercial or noncommercial purposes on property owned by a county, city, or
36 city and county or on private property within the jurisdiction of a county, city, or
37 city and county.

38 **Comment.** Section 14999.31 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
41 "audio recording," or "audio record," as context required).

1 **Gov't Code § 26202.6 (amended). Recordings of video monitoring and telephone and radio**
2 **communications**

3 SEC. _____. Section 26202.6 of the Government Code is amended to read:

4 26202.6. (a) Notwithstanding the provisions of Sections 26202, 26205, and
5 26205.1, the head of a department of a county, after one year, may destroy
6 recordings of routine video monitoring, and after 100 days may destroy recordings
7 of telephone and radio communications maintained by the department. This
8 destruction shall be approved by the legislative body and the written consent of the
9 agency attorney shall be obtained. In the event that the recordings are evidence in
10 any claim filed or any pending litigation, they shall be preserved until pending
11 litigation is resolved.

12 (b) For purposes of this section, "recordings of telephone and radio
13 communications" means the routine daily ~~taping and~~ recording of telephone
14 communications to and from a county and all radio communications relating to the
15 operations of the departments.

16 (c) For purposes of this section, "routine video monitoring" means ~~videotaping~~
17 video recording by a video or electronic imaging system designed to record the
18 regular and ongoing operations of the departments described in subdivision (a),
19 including mobile in-car video systems, jail observation and monitoring systems,
20 and building security ~~taping~~ recording systems.

21 (d) For purposes of this section, "department" includes a public safety
22 communications center operated by the county and the governing board of any
23 special district whose membership is the same as the membership of the board of
24 supervisors.

25 **Comment.** Section 26202.6 is amended to reflect advances in recording technology and for
26 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
27 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
28 "audio recording," or "audio record," as context required).

29 **Gov't Code § 26206.7 (amended). Destruction of duplicates of county records**

30 SEC. _____. Section 26206.7 of the Government Code is amended to read:

31 26206.7. Notwithstanding the provisions of Section 26202, the legislative body
32 of a county may prescribe a procedure whereby duplicates of county records less
33 than two years old may be destroyed if they are no longer required.

34 For purposes of this section, video recording media, ~~such as videotapes and~~
35 ~~films, and~~ including recordings of "routine video monitoring" pursuant to Section
36 26202.6, shall be considered duplicate records if the county keeps another record,
37 such as written minutes or an ~~audiotape~~ audio recording, of the event that is
38 recorded in the video medium. However, a video recording medium shall not be
39 destroyed or erased pursuant to this section for a period of at least 90 days after
40 occurrence of the event recorded thereon.

41 **Comment.** Section 26206.7 is amended to reflect advances in recording technology and for
42 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

1 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
2 “audio recording,” or “audio record,” as context required).

3 **Gov’t Code § 26206.8 (amended). Transit agency security systems**

4 SEC. _____. Section 26206.8 of the Government Code is amended to read:

5 26206.8. (a) When installing new security systems, a transit agency operated by
6 a county shall only purchase and install equipment capable of storing recorded
7 images for at least one year, unless all of the following conditions apply:

8 (1) The transit agency has made a diligent effort to identify a security system
9 that is capable of storing recorded data for one year.

10 (2) The transit agency determines that the technology to store recorded data in
11 an economically and technologically feasible manner for one year is not available.

12 (3) The transit agency purchases and installs the best available technology with
13 respect to storage capacity that is both economically and technologically feasible
14 at that time.

15 (b) Notwithstanding any other provision of law, ~~videotapes or~~ video recordings
16 or other recordings made by security systems operated as part of a public transit
17 system shall be retained for one year, unless one of the following conditions
18 applies:

19 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any
20 claim filed or any pending litigation, in which case the ~~videotapes or~~ video
21 recordings or other recordings shall be preserved until the claim or the pending
22 litigation is resolved.

23 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event
24 that was or is the subject of an incident report, in which case the ~~videotapes or~~
25 video recordings or other recordings shall be preserved until the incident is
26 resolved.

27 (3) The transit agency utilizes a security system that was purchased or installed
28 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
29 which case the ~~videotapes or~~ video recordings or other recordings shall be
30 preserved for as long as the installed technology allows.

31 **Comment.** Section 26206.8 is amended to reflect advances in recording technology and for
32 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
33 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
34 “audio recording,” or “audio record,” as context required).

35 **Gov. Code § 27491.47 (amended). Removal of corneal eye tissue**

36 SEC. _____. Section 27491.47 of the Government Code is amended to read:

37 27491.47. (a) Notwithstanding any other provision of law, the coroner may, in
38 the course of an autopsy, remove and release or authorize the removal and release
39 of corneal eye tissue from a body within the coroner’s custody, if all of the
40 following conditions are met:

41 (1) The autopsy has otherwise been authorized.

1 (2) The coroner has no knowledge of objection to the removal and release of
2 corneal tissue having been made by the decedent or any other person specified in
3 Section 7151 of the Health and Safety Code and has obtained any one of the
4 following:

5 (A) A dated and signed written consent by the donor or any other person
6 specified in Section 7151 of the Health and Safety Code on a form that clearly
7 indicates the general intended use of the tissue and contains the signature of at
8 least one witness.

9 (B) Proof of the existence of a recorded telephonic consent by the donor or any
10 other person specified in Section 7151 of the Health and Safety Code in the form
11 of an audio ~~tape~~ recording of the conversation or a transcript of the recorded
12 conversation, which indicates the general intended use of the tissue.

13 (C) A document recording a verbal telephonic consent by the donor or any other
14 person specified in Section 7151 of the Health and Safety Code, witnessed and
15 signed by no less than two members of the requesting entity, hospital, eye bank, or
16 procurement organization, memorializing the consenting person's knowledge of
17 and consent to the general intended use of the gift.

18 The form of consent obtained under subparagraph (A), (B), or (C) shall be kept
19 on file by the requesting entity and the official agency for a minimum of three
20 years.

21 (3) The removal of the tissue will not unnecessarily mutilate the body, be
22 accomplished by enucleation, nor interfere with the autopsy.

23 (4) The tissue will be removed by a coroner, licensed physician and surgeon, or
24 a trained transplant technician.

25 (5) The tissue will be released to a public or nonprofit facility for transplant,
26 therapeutic, or scientific purposes.

27 (b) Neither the coroner nor medical examiner authorizing the removal of the
28 corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or
29 person acting upon the request, order, or direction of the coroner or medical
30 examiner in the removal of corneal tissue pursuant to this section, shall incur civil
31 liability for the removal in an action brought by any person who did not object
32 prior to the removal of the corneal tissue, nor be subject to criminal prosecution
33 for the removal of the corneal tissue pursuant to the provisions of this section.

34 (c) This section may not be construed to interfere with the ability of a person to
35 make an anatomical gift pursuant to the Uniform Anatomical Gift Act (Chapter
36 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and
37 Safety Code).

38 **Comment.** Section 27491.7 is amended to reflect advances in recording technology and for
39 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
40 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
41 "audio recording," or "audio record," as context required).

1 **Gov't Code § 34090.6 (amended). Destruction by department of recordings of routine video**
2 **monitoring and telephone and radio communications**

3 SEC. _____. Section 34090.6 of the Government Code is amended to read:

4 34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a
5 department of a city or city and county, after one year, may destroy recordings of
6 routine video monitoring, and after 100 days may destroy recordings of telephone
7 and radio communications maintained by the department. This destruction shall be
8 approved by the legislative body and the written consent of the agency attorney
9 shall be obtained. In the event that the recordings are evidence in any claim filed
10 or any pending litigation, they shall be preserved until pending litigation is
11 resolved.

12 (b) For purposes of this section, "recordings of telephone and radio
13 communications" means the routine daily ~~taping and~~ recording of telephone
14 communications to and from a city, city and county, or department, and all radio
15 communications relating to the operations of the departments.

16 (c) For purposes of this section, "routine video monitoring" means ~~videotaping~~
17 video recording by a video or electronic imaging system designed to record the
18 regular and ongoing operations of the departments described in subdivision (a),
19 including mobile in-car video systems, jail observation and monitoring systems,
20 and building security taping systems.

21 (d) For purposes of this section, "department" includes a public safety
22 communications center operated by the city or city and county.

23 **Comment.** Section 34090.6 is amended to reflect advances in recording technology and for
24 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
25 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
26 "audio recording," or "audio record," as context required).

27 **Gov't Code § 34090.7 (amended). Destruction by legislative body of recordings of routine**
28 **video monitoring and telephone and radio communications**

29 SEC. _____. Section 34090.7 of the Family Code is amended to read:

30 34090.7. Notwithstanding the provisions of Section 34090, the legislative body
31 of a city may prescribe a procedure whereby duplicates of city records less than
32 two years old may be destroyed if they are no longer required.

33 For purposes of this section, video recording media, ~~such as videotapes and~~
34 ~~films, and~~ including recordings of "routine video monitoring" pursuant to Section
35 34090.6, shall be considered duplicate records if the city keeps another record,
36 such as written minutes or an ~~audiotape~~ audio recording, of the event that is
37 recorded in the video medium. However, a video recording medium shall not be
38 destroyed or erased pursuant to this section for a period of at least 90 days after
39 occurrence of the event recorded thereon.

40 **Comment.** Section 34090.7 is amended to reflect advances in recording technology and for
41 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
42 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
43 "audio recording," or "audio record," as context required).

1 **Gov't Code § 34090.8 (amended). Transit agency security systems**

2 SEC. _____. Section 34090.8 of the Government Code is amended to read:

3 34090.8. (a) When installing new security systems, a transit agency operated by
4 a city or city and county shall only purchase and install equipment capable of
5 storing recorded images for at least one year, unless all of the following conditions
6 apply:

7 (1) The transit agency has made a diligent effort to identify a security system
8 that is capable of storing recorded data for one year.

9 (2) The transit agency determines that the technology to store recorded data in
10 an economically and technologically feasible manner for one year is not available.

11 (3) The transit agency purchases and installs the best available technology with
12 respect to storage capacity that is both economically and technologically feasible
13 at that time.

14 (b) Notwithstanding any other provision of law, ~~videotapes or~~ video recordings
15 or other recordings made by security systems operated as part of a public transit
16 system shall be retained for one year, unless one of the following conditions
17 applies:

18 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any
19 claim filed or any pending litigation, in which case the ~~videotapes or~~ video
20 recordings or other recordings shall be preserved until the claim or the pending
21 litigation is resolved.

22 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event
23 that was or is the subject of an incident report, in which case the ~~videotapes or~~
24 video recordings or other recordings shall be preserved until the incident is
25 resolved.

26 (3) The transit agency utilizes a security system that was purchased or installed
27 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
28 which case the ~~videotapes or~~ video recordings or other recordings shall be
29 preserved for as long as the installed technology allows.

30 **Comment.** Section 34090.8 is amended to reflect advances in recording technology and for
31 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
32 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
33 "audio recording," or "audio record," as context required).

34 **Gov't Code § 50028 (amended). Coin-operated viewing machines**

35 SEC. _____. Section 50028 of the Government Code is amended to read:

36 50028. (a) The legislative body of any county, city, or city and county, whether
37 general law or chartered, may adopt, by ordinance, such rules and regulations as it
38 deems necessary, which require any coin-operated viewing machine to have
39 permanently attached thereto a tally counter which will count each coin, and
40 accumulate such count or the accumulated amount of money, deposited in such
41 coin-operated viewing machine. Such tally counter shall be resistant to tampering,
42 and shall not be capable of being reset to a lower number, and shall display the

1 count in such a manner that the accumulated total is readily visible near the coin
2 insertion slot or opening. For the purposes of this section, “coin-operated viewing
3 machine” means any projector, machine, television, or other device which displays
4 for viewing motion pictures, projection slides, filmstrips, photographic pictures,
5 video ~~tapes~~ recordings, or drawings, and which is operated by the viewer, or for
6 the viewer, by means of inserting a coin into the device, an attachment thereto, an
7 enclosure surrounding such device, or any other device electrically or
8 mechanically connected thereto. For the purposes of this section, “coin” means
9 any physical object, including, but not limited to, a piece of metal issued by the
10 federal government as money. “Coin-operated viewing machine” does not include
11 an electronic video game of skill wherein the image is created, generated, or
12 synthesized electronically, or coin-operated television receivers which display
13 commercial or public service broadcasts.

14 (b) Notwithstanding any other provision of law, any county ordinance adopted
15 pursuant to this section shall be enforceable within the incorporated, as well as the
16 unincorporated, area of the county, whether general law or chartered, unless a city
17 ordinance in direct conflict with such county ordinance has been adopted, in which
18 case such county ordinance shall be enforceable in the area of the county outside
19 of such city.

20 (c) (1) Any person who violates the provisions of the ordinance adopted
21 pursuant to this section shall be subject to a civil penalty not to exceed ten
22 thousand dollars (\$10,000) for each such machine and each day in which such
23 violation occurs.

24 (2) In determining the amount of such penalty, the court shall take into
25 consideration all relevant circumstances, including but not limited to, the
26 frequency of inspection, the cash flow through such machine, the amount of
27 revenue derived by other such machines in the vicinity, prior revenues generated,
28 the nature and persistence of the violation, and prior violations by the same person
29 or establishment.

30 (d) No peace officer, as defined in Section 830 of the Penal Code, shall check
31 such tally counters, provided, however, that an ordinance adopted pursuant to this
32 section may provide for checking of such tally counters by a person or persons
33 employed by the adopting county, city, or city and county, other than a peace
34 officer, on a predetermined schedule.

35 (e) The provisions of this section shall not be construed to limit, or otherwise
36 affect, any other power of a county, city, or city and county to license, tax, or
37 regulate business or commercial enterprises or property within their jurisdiction,
38 but shall be in addition to such powers.

39 **Comment.** Section 50028 is amended to reflect advances in recording technology and for
40 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
41 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
42 “audio recording,” or “audio record,” as context required).

1 **Gov't. Code § 53160 (amended). Destruction of recordings of routine video monitoring and**
2 **telephone and radio communications**

3 SEC. _____. Section 53160 of the Government Code is amended to read:

4 53160. (a) The head of a special district, after one year, may destroy recordings
5 of routine video monitoring, and after 100 days may destroy recordings of
6 telephone and radio communications maintained by the special district. This
7 destruction shall be approved by the legislative body and the written consent of the
8 agency attorney shall be obtained. In the event that the recordings are evidence in
9 any claim filed or any pending litigation, they shall be preserved until pending
10 litigation is resolved.

11 (b) For purposes of this article, "recordings of telephone and radio
12 communications" means the routine daily taping and recording of telephone
13 communications to and from a special district, and all radio communications
14 relating to the operations of the special district.

15 (c) For purposes of this article, "routine video monitoring" means ~~videotaping~~
16 video recording by a video or electronic imaging system designed to record the
17 regular and ongoing operations of the special district, including mobile in-car
18 video systems, jail observation and monitoring systems, and building security
19 taping systems.

20 (d) For purposes of this article, "special district" shall have the same meaning as
21 "public agency," as that term is defined in Section 53050.

22 **Comment.** Section 53160 is amended to reflect advances in recording technology and for
23 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
24 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
25 "audio recording," or "audio record," as context required).

26 **Gov't Code § 53161 (amended). Destruction by legislative body of recordings of routine**
27 **video monitoring and telephone and radio communications**

28 SEC. _____. Section 53161 of the Government Code is amended to read:

29 53161. Notwithstanding Section 53160, the legislative body of a special district
30 may prescribe a procedure whereby duplicates of special district records less than
31 two years old may be destroyed if they are no longer required.

32 For purposes of this section, video recording media, ~~such as videotapes and~~
33 ~~films, and~~ including recordings of "routine video monitoring" pursuant to Section
34 53160, shall be considered duplicate records if the special district keeps another
35 record, such as written minutes or an ~~audiotape~~ audio recording, of the event that
36 is recorded in the video medium. However, a video recording medium shall not be
37 destroyed or erased pursuant to this section for at least 90 days after occurrence of
38 the event recorded thereon.

39 **Comment.** Section 53161 is amended to reflect advances in recording technology and for
40 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
41 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
42 "audio recording," or "audio record," as context required).

1 **Gov't Code § 53162 (amended). Transit agency security systems**

2 SEC. _____. Section 53162 of the Government Code is amended to read:

3 53162. (a) When installing new security systems, a transit agency operated by a
4 special district shall only purchase and install equipment capable of storing
5 recorded images for at least one year, unless all of the following conditions apply:

6 (1) The transit agency has made a diligent effort to identify a security system
7 that is capable of storing recorded data for one year.

8 (2) The transit agency determines that the technology to store recorded data in
9 an economically and technologically feasible manner for one year is not available.

10 (3) The transit agency purchases and installs the best available technology with
11 respect to storage capacity that is both economically and technologically feasible
12 at that time.

13 (b) Notwithstanding any other provision of law, ~~videotapes or~~ video recordings
14 or other recordings made by security systems operated as part of a public transit
15 system shall be retained for one year, unless one of the following conditions
16 applies:

17 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any
18 claim filed or any pending litigation, in which case the ~~videotapes or~~ video
19 recordings or other recordings shall be preserved until the claim or the pending
20 litigation is resolved.

21 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event
22 that was or is the subject of an incident report, in which case the ~~videotapes or~~
23 video recordings or other recordings shall be preserved until the incident is
24 resolved.

25 (3) The transit agency utilizes a security system that was purchased or installed
26 prior to January 1, 2004, or that meets the requirements of subdivision (a), in
27 which case the ~~videotapes or~~ video recordings or other recordings shall be
28 preserved for as long as the installed technology allows.

29 **Comment.** Section 53162 is amended to reflect advances in recording technology and for
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
31 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
32 "audio recording," or "audio record," as context required).

33 **Gov. Code § 54953.5 (amended). Recording of public meeting**

34 SEC. _____. Section 54953.5 of the Government Code is amended to read:

35 54953.5. (a) Any person attending an open and public meeting of a legislative
36 body of a local agency shall have the right to record the proceedings with an audio
37 or video ~~tape~~ recorder or a still or motion picture camera in the absence of a
38 reasonable finding by the legislative body of the local agency that the recording
39 cannot continue without noise, illumination, or obstruction of view that
40 constitutes, or would constitute, a persistent disruption of the proceedings.

41 (b) Any ~~tape or film record~~ audio or video recording of an open and public
42 meeting made for whatever purpose by or at the direction of the local agency shall

1 be subject to inspection pursuant to the California Public Records Act (Chapter 3.5
2 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding
3 Section 34090, may be erased or destroyed 30 days after the ~~taping~~ or recording.
4 Any inspection of a ~~video or tape~~ an audio or video recording shall be provided
5 without charge on a ~~video or tape player~~ equipment made available by the local
6 agency.

7 **Comment.** Section 54953.5 is amended to reflect advances in recording technology and for
8 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
9 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
10 “audio recording,” or “audio record,” as context required).

11 **Gov. Code § 54960 (amended). Action to stop or prevent violation of meeting provision**

12 SEC. _____. Section 54960 of the Government Code is amended to read:

13 54960. (a) The district attorney or any interested person may commence an
14 action by mandamus, injunction or declaratory relief for the purpose of stopping or
15 preventing violations or threatened violations of this chapter by members of the
16 legislative body of a local agency or to determine the applicability of this chapter
17 to actions or threatened future action of the legislative body, or to determine
18 whether any rule or action by the legislative body to penalize or otherwise
19 discourage the expression of one or more of its members is valid or invalid under
20 the laws of this state or of the United States, or to compel the legislative body to
21 ~~tape~~ audio record its closed sessions as hereinafter provided.

22 (b) The court in its discretion may, upon a judgment of a violation of Section
23 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative
24 body to ~~tape~~ audio record its closed sessions and preserve the ~~tape~~ audio
25 recordings for the period and under the terms of security and confidentiality the
26 court deems appropriate.

27 (c) (1) Each recording so kept shall be immediately labeled with the date of the
28 closed session recorded and the title of the clerk or other officer who shall be
29 custodian of the recording.

30 (2) The ~~tapes~~ audio recordings shall be subject to the following discovery
31 procedures:

32 (A) In any case in which discovery or disclosure of the ~~tape~~ audio recording is
33 sought by either the district attorney or the plaintiff in a civil action pursuant to
34 Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has
35 occurred in a closed session which has been recorded pursuant to this section, the
36 party seeking discovery or disclosure shall file a written notice of motion with the
37 appropriate court with notice to the governmental agency which has custody and
38 control of the ~~tape~~ audio recording. The notice shall be given pursuant to
39 subdivision (b) of Section 1005 of the Code of Civil Procedure.

40 (B) The notice shall include, in addition to the items required by Section 1010 of
41 the Code of Civil Procedure, all of the following:

1 (i) Identification of the proceeding in which discovery or disclosure is sought,
2 the party seeking discovery or disclosure, the date and time of the meeting
3 recorded, and the governmental agency which has custody and control of the
4 recording.

5 (ii) An affidavit which contains specific facts indicating that a violation of the
6 act occurred in the closed session.

7 (3) If the court, following a review of the motion, finds that there is good cause
8 to believe that a violation has occurred, the court may review, in camera, the
9 recording of that portion of the closed session alleged to have violated the act.

10 (4) If, following the in camera review, the court concludes that disclosure of a
11 portion of the recording would be likely to materially assist in the resolution of the
12 litigation alleging violation of this chapter, the court shall, in its discretion, make a
13 certified transcript of the portion of the recording a public exhibit in the
14 proceeding.

15 (5) Nothing in this section shall permit discovery of communications which are
16 protected by the attorney-client privilege.

17 **Comment.** Section 54960 is amended to reflect advances in recording technology and for
18 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
19 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
20 “audio recording,” or “audio record,” as context required).

21 **Note.** This section contemplates a court ordering a state body to tape record closed sessions of its
22 meetings, and preserve the recordings for potential future disclosure, following a judgment that
23 the body has violated a specified provision of law governing closed sessions of public meetings.
24 The Commission inquires of the Attorney General or any other interested person whether
25 providing that this recording may be conducted by means of electronic or digital audio recording
26 technology, which does create a tangible “original” recording, would effect a substantive revision
27 of the section.

28 **Gov’t Code § 68151 (amended). Definitions**

29 SEC. _____. Section 68151 of the Government Code is amended to read:

30 68151. The following definitions apply to this chapter:

31 (a) “Court record” shall consist of the following:

32 (1) All filed papers and documents in the case folder; but if no case folder is
33 created by the court, all filed papers and documents that would have been in the
34 case folder if one had been created.

35 (2) Administrative records filed in an action or proceeding, depositions, paper
36 exhibits, transcripts, including preliminary hearing transcripts, and ~~tapes~~
37 recordings of electronically recorded proceedings filed, lodged, or maintained in
38 connection with the case, unless disposed of earlier in the case pursuant to law.

39 (3) Other records listed under subdivision (j) of Section 68152.

40 (b) “Notice of destruction and no transfer” means that the clerk has given notice
41 of destruction of the superior court records open to public inspection, and that
42 there is no request and order for transfer of the records as provided in the
43 California Rules of Court.

1 (c) “Final disposition of the case” means that an acquittal, dismissal, or order of
2 judgment has been entered in the case or proceeding, the judgment has become
3 final, and no postjudgment motions or appeals are pending in the case or for the
4 reviewing court upon the mailing of notice of the issuance of the remittitur.

5 In a criminal prosecution, the order of judgment shall mean imposition of
6 sentence, entry of an appealable order (including, but not limited to, an order
7 granting probation, commitment of a defendant for insanity, or commitment of a
8 defendant as a narcotics addict appealable under Section 1237 of the Penal Code),
9 or forfeiture of bail without issuance of a bench warrant or calendaring of other
10 proceedings.

11 (d) “Retain permanently” means that the original court records shall never be
12 transferred or destroyed.

13 **Comment.** Section 68151 is amended to reflect advances in recording technology and for
14 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
15 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
16 “audio recording,” or “audio record,” as context required).

17 **Health & Safety Code § 1569.69 (amended). Training of employees**

18 SEC. _____. Section 1569.69 of the Health and Safety Code is amended to read:

19 1569.69. (a) Each residential care facility for the elderly licensed under this
20 chapter shall ensure that each employee of the facility who assists residents with
21 the self-administration of medications meets the following training requirements:

22 (1) In facilities licensed to provide care for 16 or more persons, the employee
23 shall complete 16 hours of initial training. This training shall consist of eight hours
24 of hands-on shadowing training, which shall be completed prior to assisting with
25 the self-administration of medications, and eight hours of other training or
26 instruction, as described in subdivision (f), which shall be completed within the
27 first two weeks of employment.

28 (2) In facilities licensed to provide care for 15 or fewer persons, the employee
29 shall complete six hours of initial training. This training shall consist of two hours
30 of hands-on shadowing training, which shall be completed prior to assisting with
31 the self-administration of medications, and four hours of other training or
32 instruction, as described in subdivision (f), which shall be completed within the
33 first two weeks of employment.

34 (3) An employee shall be required to complete the training requirements for
35 hands-on shadowing training described in this subdivision prior to assisting any
36 resident in the self-administration of medications. The training and instruction
37 described in this subdivision shall be completed, in their entirety, within the first
38 two weeks of employment.

39 (4) The training shall cover all of the following areas:

40 (A) The role, responsibilities, and limitations of staff who assist residents with
41 the self-administration of medication, including tasks limited to licensed medical
42 professionals.

- 1 (B) An explanation of the terminology specific to medication assistance.
- 2 (C) An explanation of the different types of medication orders: prescription,
3 over-the-counter, controlled, and other medications.
- 4 (D) An explanation of the basic rules and precautions of medication assistance.
- 5 (E) Information on medication forms and routes for medication taken by
6 residents.
- 7 (F) A description of procedures for providing assistance with the self-
8 administration of medications in and out of the facility, and information on the
9 medication documentation system used in the facility.
- 10 (G) An explanation of guidelines for the proper storage, security, and
11 documentation of centrally stored medications.
- 12 (H) A description of the processes used for medication ordering, refills and the
13 receipt of medications from the pharmacy.
- 14 (I) An explanation of medication side effects, adverse reactions, and errors.
- 15 (5) To complete the training requirements set forth in this subdivision, each
16 employee shall pass an examination that tests the employee's comprehension of,
17 and competency in, the subjects listed in paragraph (3).
- 18 (6) Residential care facilities for the elderly shall encourage pharmacists and
19 licensed medical professionals to use plain English when preparing labels on
20 medications supplied to residents. As used in this section, "plain English" means
21 that no abbreviations, symbols, or Latin medical terms shall be used in the
22 instructions for the self-administration of medication.
- 23 (7) The training requirements of this section are not intended to replace or
24 supplant those required of all staff members who assist residents with personal
25 activities of daily living as set forth in Section 1569.625.
- 26 (8) The training requirements of this section shall be repeated if either of the
27 following occur:
- 28 (A) An employee returns to work for the same licensee after a break of service
29 of more than 180 consecutive calendar days.
- 30 (B) An employee goes to work for another licensee in a facility in which he or
31 she assists residents with the self-administration of medication.
- 32 (b) Each employee who received training and passed the exam required in
33 paragraph (5) of subdivision (a), and who continues to assist with the self-
34 administration of medicines, shall also complete four hours of in-service training
35 on medication-related issues in each succeeding 12-month period.
- 36 (c) The requirements set forth in subdivisions (a) and (b) do not apply to persons
37 who are licensed medical professionals.
- 38 (d) Each residential care facility for the elderly that provides employee training
39 under this section shall use the training material and the accompanying
40 examination that are developed by, or in consultation with, a licensed nurse,
41 pharmacist, or physician. The licensed residential care facility for the elderly shall
42 maintain the following documentation for each medical consultant used to develop
43 the training:

- 1 (1) The name, address, and telephone number of the consultant.
- 2 (2) The date when consultation was provided.
- 3 (3) The consultant's organization affiliation, if any, and any educational and
4 professional qualifications specific to medication management.
- 5 (4) The training topics for which consultation was provided.
- 6 (e) Each person who provides employee training under this section shall meet
7 the following education and experience requirements:
- 8 (1) A minimum of five hours of initial, or certified continuing, education or
9 three semester units, or the equivalent, from an accredited educational institution,
10 on topics relevant to medication management.
- 11 (2) The person shall meet any of the following practical experience or licensure
12 requirements:
- 13 (A) Two years full-time experience, within the last four years, as a consultant
14 with expertise in medication management in areas covered by the training
15 described is subdivision (a).
- 16 (B) Two years full-time experience, or the equivalent, within the last four years,
17 as an administrator for a residential care facility for the elderly, during which time
18 the individual has acted in substantial compliance with applicable regulations.
- 19 (C) Two years full-time experience, or the equivalent, within the last four years,
20 as a direct care provider assisting with the self-administration of medications for a
21 residential care facility for the elderly, during which time the individual has acted
22 in substantial compliance with applicable regulations.
- 23 (D) Possession of a license as a medical professional.
- 24 (3) The licensed residential care facility for the elderly shall maintain the
25 following documentation on each person who provides employee training under
26 this section:
- 27 (A) The person's name, address, and telephone number.
- 28 (B) Information on the topics or subject matter covered in the training.
- 29 (C) The time, dates, and hours of training provided.
- 30 (f) Other training or instruction, as required in paragraphs (1) and (2) of
31 subdivision (a), may be provided off site, and may use various methods of
32 instruction, including, but not limited to, all of the following:
- 33 (1) Lectures by presenters who are knowledgeable about medication
34 management.
- 35 (2) ~~Video instruction tapes~~ Recorded video instruction, interactive material,
36 online training, and books.
- 37 (3) Other written or visual materials approved by organizations or individuals
38 with expertise in medication management.
- 39 (g) Residential care facilities for the elderly licensed to provide care for 16 or
40 more persons shall maintain documentation that demonstrates that a consultant
41 pharmacist or nurse has reviewed the facility's medication management program
42 and procedures at least twice a year.

1 (h) Nothing in this section authorizes unlicensed personnel to directly administer
2 medications.

3 (i) This section shall become operative on January 1, 2008.

4 **Comment.** Subdivision (f)(2) of Section 1569.69 is amended to reflect advances in recording
5 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
6 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
7 technology,” “audio recording,” or “audio record,” as context required).

8 **Health & Safety Code § 1736.5 (amended). Grounds for denial of application or certificate**

9 SEC. _____. Section 1736.5 of the Health and Safety Code is amended to read:

10 1736.5. (a) The state department shall deny a training application and deny,
11 suspend, or revoke a certificate issued under this article if the applicant or
12 certificate holder has been convicted of a violation or attempted violation of any of
13 the following Penal Code provisions: Section 187, subdivision (a) of Section 192,
14 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262,
15 or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
16 subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d),
17 (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475,
18 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or
19 666, unless any of the following apply:

20 (1) The person was convicted of a felony and has obtained a certificate of
21 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
22 the Penal Code and the information or accusation against him or her has been
23 dismissed pursuant to Section 1203.4 of the Penal Code.

24 (2) The person was convicted of a misdemeanor and the information or
25 accusation against him or her has been dismissed pursuant to Section 1203.4 or
26 1203.4a of the Penal Code.

27 (3) The certificate holder was convicted of a felony or a misdemeanor, but has
28 previously disclosed the fact of each conviction to the department, and the
29 department has made a determination in accordance with law that the conviction
30 does not disqualify the applicant from certification.

31 (b) An application or certificate shall be denied, suspended, or revoked upon
32 conviction in another state of an offense that, if committed or attempted in this
33 state, would have been punishable as one or more of the offenses set forth in
34 subdivision (a), unless evidence of rehabilitation comparable to the certificate of
35 rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of
36 subdivision (a) is provided.

37 (c) (1) The state department may deny an application or deny, suspend, or
38 revoke a certificate issued under this article for any of the following:

39 (A) Unprofessional conduct, including, but not limited to, incompetence, gross
40 negligence, physical, mental, or verbal abuse of patients, or misappropriation of
41 property of patients or others.

1 (B) Conviction of a crime substantially related to the qualifications, functions,
2 and duties of a home health aide, irrespective of a subsequent order under Section
3 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department
4 determines that the applicant or certificate holder has not adequately demonstrated
5 that he or she has been rehabilitated and will present a threat to the health, safety,
6 or welfare of patients.

7 (C) Conviction for, or use of, any controlled substance as defined in Division 10
8 (commencing with Section 11000), or any dangerous drug, as defined in Section
9 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or
10 in a manner dangerous or injurious to the home health aide, any other person, or
11 the public, to the extent that this use would impair the ability to conduct, with
12 safety to the public, the practice authorized by a certificate.

13 (D) Procuring a home health aide certificate by fraud, misrepresentation, or
14 mistake.

15 (E) Making or giving any false statement or information in conjunction with the
16 application for issuance of a home health aide certificate or training and
17 examination application.

18 (F) Impersonating any applicant, or acting as proxy for an applicant, in any
19 examination required under this article for the issuance of a certificate.

20 (G) Impersonating another home health aide, a licensed vocational nurse, or a
21 registered nurse, or permitting or allowing another person to use a certificate for
22 the purpose of providing nursing services.

23 (H) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violation of, or conspiring to violate any provision or term of, this
25 article.

26 (2) In determining whether or not to deny an application or deny, suspend, or
27 revoke a certificate issued under this article pursuant to this subdivision, the
28 department shall take into consideration the following factors as evidence of good
29 character and rehabilitation:

30 (A) The nature and seriousness of the offense under consideration and its
31 relationship to their employment duties and responsibilities.

32 (B) Activities since conviction, including employment or participation in
33 therapy or education, that would indicate changed behavior.

34 (C) The time that has elapsed since the commission of the conduct or offense
35 referred to in subparagraph (A) or (B) and the number of offenses.

36 (D) The extent to which the person has complied with any terms of parole,
37 probation, restitution, or any other sanction lawfully imposed against the person.

38 (E) Any rehabilitation evidence, including character references, submitted by the
39 person.

40 (F) Employment history and current employer recommendations.

41 (G) Circumstances surrounding the commission of the offense that would
42 demonstrate the unlikelihood of repetition.

43 (H) Granting by the Governor of a full and unconditional pardon.

1 (I) A certificate of rehabilitation from a superior court.

2 (d) When the state department determines that a certificate shall be suspended,
3 the state department shall specify the period of actual suspension. The state
4 department may determine that the suspension shall be stayed, placing the
5 certificate holder on probation with specified conditions for a period not to exceed
6 two years. When the state department determines that probation is the appropriate
7 action, the certificate holder shall be notified that in lieu of the state department
8 proceeding with a formal action to suspend the certification and in lieu of an
9 appeal pursuant to subdivision (g), the certificate holder may request to enter into
10 a diversion program agreement. A diversion program agreement shall specify
11 terms and conditions related to matters, including, but not limited to, work
12 performance, rehabilitation, training, counseling, progress reports, and treatment
13 programs. If a certificate holder successfully completes a diversion program, no
14 action shall be taken upon the allegations that were the basis for the diversion
15 agreement. Upon failure of the certificate holder to comply with the terms and
16 conditions of an agreement, the state department may proceed with a formal action
17 to suspend or revoke the certification.

18 (e) A plea or verdict of guilty, or a conviction following a plea of nolo
19 contendere, shall be deemed a conviction within the meaning of this article. The
20 state department may deny an application or deny, suspend, or revoke a
21 certification based on a conviction as provided in this article when the judgment of
22 conviction is entered or when an order granting probation is made suspending the
23 imposition of sentence.

24 (f) Upon determination to deny an application or deny, revoke, or suspend a
25 certificate, the state department shall notify the applicant or certificate holder in
26 writing by certified mail of all of the following:

27 (1) The reasons for the determination.

28 (2) The applicant's or certificate holder's right to appeal the determination if the
29 determination was made under subdivision (c).

30 (g) (1) Upon written notification that the state department has determined that an
31 application shall be denied or a certificate shall be denied, suspended, or revoked
32 under subdivision (c), the applicant or certificate holder may request an
33 administrative hearing by submitting a written request to the state department
34 within 20 business days of receipt of the written notification. Upon receipt of a
35 written request, the state department shall hold an administrative hearing pursuant
36 to the procedures specified in Section 100171, except where those procedures are
37 inconsistent with this section.

38 (2) A hearing under this section shall be conducted by a hearing officer or
39 administrative law judge designated by the director at a location other than the
40 work facility convenient to the applicant or certificate holder. The hearing shall be
41 ~~tape~~ audio or video recorded and a written decision shall be sent by certified mail
42 to the applicant or certificate holder within 30 calendar days of the hearing. Except
43 as specified in subdivision (h), the effective date of an action to revoke or suspend

1 a certificate shall be specified in the written decision, or if no administrative
2 hearing is timely requested, the effective date shall be 21 business days from
3 written notification of the department's determination to revoke or suspend.

4 (h) The state department may revoke or suspend a certificate prior to any
5 hearing when immediate action is necessary in the judgment of the director to
6 protect the public welfare. Notice of this action, including a statement of the
7 necessity of immediate action to protect the public welfare, shall be sent in
8 accordance with subdivision (f). If the certificate holder requests an administrative
9 hearing pursuant to subdivision (g), the state department shall hold the
10 administrative hearing as soon as possible but not later than 30 calendar days from
11 receipt of the request for a hearing. A written hearing decision upholding or setting
12 aside the action shall be sent by certified mail to the certificate holder within 30
13 calendar days of the hearing.

14 (i) Upon the expiration of the term of suspension, he or she shall be reinstated by
15 the state department and shall be entitled to resume practice unless it is established
16 to the satisfaction of the state department that the person has practiced as a home
17 health aide in California during the term of suspension. In this event, the state
18 department shall revoke the person's certificate.

19 (j) Upon a determination to deny an application or deny, revoke, or suspend a
20 certificate, the department shall notify the employer of the applicant or certificate
21 holder in writing of that determination, and whether the determination is final, or
22 whether a hearing is pending relating to this determination. If a licensee or facility
23 is required to deny employment or terminate employment of the employee based
24 upon notice from the state that the employee is determined to be unsuitable for
25 employment under this section, the licensee or facility shall not incur criminal,
26 civil, unemployment insurance, workers' compensation, or administrative liability
27 as a result of that denial or termination.

28 **Comment.** Subdivision (g)(2) of Section 1736.5 is amended to reflect advances in recording
29 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
30 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
31 technology," "audio recording," or "audio record," as context required).

32 **Health & Safety Code § 7150.5 (amended). Anatomical gift**

33 SEC. _____. Section 7150.5 of the Health and Safety Code is amended to read:

34 7150.5. (a) Except as provided in subdivision (b) of Section 12811 of, and
35 subdivision (b) of Section 13005 of, the Vehicle Code, an individual who is at
36 least 18 years of age, or an individual who is between 15 and 18 years of age as
37 specified in subdivision (m), may make an anatomical gift for any of the purposes
38 stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of
39 those purposes, or refuse to make an anatomical gift.

40 (b) An anatomical gift may be made only by one of the following:

41 (1) A document of gift signed by the donor.

1 (2) A document of gift signed by another individual and by two witnesses, all of
2 whom have signed at the direction and in the presence of the donor and of each
3 other, and state that it has been so signed.

4 (3) A document of gift orally made by a donor by means of ~~a tape~~ an audio
5 recording in his or her own voice.

6 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle
7 operator's or chauffeur's license, the document of gift shall comply with
8 subdivision (b). Revocation, suspension, expiration, or cancellation of the license
9 does not invalidate the anatomical gift.

10 (d) A document of gift may designate a particular physician or surgeon to carry
11 out the appropriate procedures. In the absence of a designation or if the designee is
12 not available, the donee or other person authorized to accept the anatomical gift
13 may employ or authorize any physician, surgeon, technician, or enucleator to carry
14 out the appropriate procedures.

15 (e) An anatomical gift by will takes effect upon death of the testator, whether or
16 not the will is probated. If, after death, the will is declared invalid for testamentary
17 purposes, the validity of the anatomical gift is unaffected.

18 (f) A donor may amend or revoke an anatomical gift, not made by will, only by
19 one or more of the following:

20 (1) A signed statement.

21 (2) An oral statement made in the presence of two individuals or by means of a
22 ~~tape~~ an audio recording in the donor's own voice.

23 (3) Any form of communication during a terminal illness or injury addressed to
24 a physician or surgeon.

25 (4) The delivery of a signed statement to a specified donee to whom a document
26 of gift had been delivered.

27 (g) The donor of an anatomical gift made by will may amend or revoke the gift
28 in the manner provided for amendment or revocation of wills, or as provided in
29 subdivision (f).

30 (h) An anatomical gift that is not revoked by the donor before death is
31 irrevocable and does not require the consent or concurrence of any person after the
32 donor's death.

33 (i) An individual may refuse to make an anatomical gift of the individual's body
34 or part by a writing signed in the same manner as a document of gift, a statement
35 attached to or imprinted on a donor's motor vehicle operator's or chauffeur's
36 license, or any other writing used to identify the individual as refusing to make an
37 anatomical gift. During a terminal illness or injury, the refusal may be an oral
38 statement or other form of communication.

39 (j) In the absence of contrary indications by the donor, an anatomical gift of a
40 part is neither a refusal to give other parts nor a limitation on an anatomical gift
41 under Section 7151 or on a removal or release of other parts under Section 7151.5.

42 (k) In the absence of contrary indications by the donor, a revocation or
43 amendment of an anatomical gift is not a refusal to make another anatomical gift.

1 If the donor intends a revocation to be a refusal to make an anatomical gift, the
2 donor shall make the refusal pursuant to subdivision (i).

3 (l) Any signed statement that is in compliance with this chapter, or a driver's
4 license or identification card that meets the requirements for validity set forth in
5 subdivision (b) of Section 12811 of the Vehicle Code or subdivision (b) of Section
6 13005 of the Vehicle Code, shall be honored and no further consent or approval
7 from the next of kin or other person listed in subdivision (a) of Section 7151 shall
8 be required.

9 (m) Notwithstanding subdivision (a), an individual who is between 15 and 18
10 years of age may make an anatomical gift for any purpose stated in subdivision (a)
11 of Section 7153, limit an anatomical gift to one or more of those purposes, refuse
12 to make an anatomical gift, or amend or revoke an anatomical gift, only upon the
13 written consent of a parent or guardian.

14 **Comment.** Section 7150.5 is amended to reflect advances in recording technology and for
15 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
16 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
17 "audio recording," or "audio record," as context required).

18 **Health & Safety Code § 7151.5 (amended). Removal of body part from decedent**

19 SEC. _____. Section 7151.5 of the Health and Safety Code is amended to read:

20 7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner
21 may release and permit the removal of a part from a body within that official's
22 custody, for transplantation, therapy, or reconditioning, if all of the following
23 occur:

24 (1) The official has received a request for the part from a hospital, physician,
25 surgeon, or procurement organization or, in the case of a pacemaker, from a
26 person who reconditions pacemakers.

27 (2) A reasonable effort has been made to locate and inform persons listed in
28 subdivision (a) of Section 7151 of their option to make, or object to making, an
29 anatomical gift. Except in the case where the useful life of the part does not
30 permit, a reasonable effort shall be deemed to have been made when a search for
31 the persons has been underway for at least 12 hours. The search shall include a
32 check of local police missing persons records, examination of personal effects, and
33 the questioning of any persons visiting the decedent before his or her death or in
34 the hospital, accompanying the decedent's body, or reporting the death, in order to
35 obtain information that might lead to the location of any persons listed in
36 subdivision (a) of Section 7151.

37 (3) The official does not know of a refusal or contrary indication by the decedent
38 or objection by a person having priority to act as listed in subdivision (a) of
39 Section 7151.

40 (4) The removal will be by a physician, surgeon, or technician; but in the case of
41 eyes, by one of them or by an enucleator.

42 (5) The removal will not interfere with any autopsy or investigation.

1 (6) The removal will be in accordance with accepted medical standards.

2 (7) Cosmetic restoration will be done, if appropriate.

3 (b) Except as provided in Section 7152, if the body is not within the custody of
4 the coroner or medical examiner, a hospital may release and permit the removal of
5 a part from a body if the hospital, after a reasonable effort has been made to locate
6 and inform persons listed in subdivision (a) of Section 7151 of their option to
7 make, or object to making, an anatomical gift, determines and certifies that the
8 persons are not available. A search for the persons listed in subdivision (a) of
9 Section 7151 may be initiated in anticipation of death, but, except in the case
10 where the useful life of the part does not permit, the determination may not be
11 made until the search has been underway for at least 12 hours. The search shall
12 include a check of local police missing persons records, examination of personal
13 effects, and the questioning of any persons visiting the decedent before his or her
14 death or in the hospital, accompanying the decedent's body, or reporting the death,
15 in order to obtain information that might lead to the location of any persons listed
16 in subdivision (a) of Section 7151.

17 (c) Except as provided in Section 7152, if the body is not within the custody of
18 the coroner or medical examiner or a hospital, the local public health officer may
19 release and permit the removal of any part from a body in the local public health
20 officer's custody for transplantation, therapy, or reconditioning if the requirements
21 of subdivision (a) are met.

22 (d) An official or hospital releasing and permitting the removal of a part shall
23 maintain a permanent record of the name of the decedent, the person making the
24 request, the date and purpose of the request, the part requested, any required
25 written or recorded telephonic consent, and the person to whom it was released.

26 (e) In the case of corneal material to be used for the purpose of transplantation,
27 the official releasing and permitting the removal of the corneal material and the
28 requesting entity shall obtain and keep on file for not less than three years a copy
29 of any one of the following:

30 (1) A dated and signed written consent by the donor or any other person
31 specified in Section 7151 on a form that clearly indicates the general intended use
32 of the tissue and contains the signature of at least one witness.

33 (2) Proof of the existence of a recorded telephonic consent by the donor or any
34 person specified in Section 7151 in the form of an audio ~~tape~~ recording of the
35 conversation or a transcript of the recorded conversation, which indicates the
36 general intended use of the tissue.

37 (3) A document recording a verbal telephonic consent by the donor or any other
38 person specified in Section 7151, witnessed and signed by no less than two
39 members of the requesting entity, hospital, eye bank, or procurement organization,
40 memorializing the consenting person's knowledge of and consent to the general
41 intended use of the gift.

42 These requirements are necessary only if the official agency chooses to
43 participate in the transfer of corneal tissue with the requesting entity.

1 (f) Neither the coroner nor medical examiner authorizing the removal of a body
2 part or tissue, nor any hospital, medical center, tissue bank, storage facility, or
3 person acting upon the request, order, or direction of the coroner or medical
4 examiner in the removal of a body part or tissue pursuant to this section, shall
5 incur civil liability for the removal in an action brought by any person who did not
6 object prior to the removal of the body part or tissue, nor be subject to criminal
7 prosecution for the removal of the body part or tissue pursuant to this section.

8 **Comment.** Subdivision (e)(2) of Section 7151.5 is amended to reflect advances in recording
9 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
10 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
11 technology,” “audio recording,” or “audio record,” as context required).

12 **Health & Safety Code § 7158.3 (amended). Duties of donee of anatomical gift**

13 SEC. _____. Section 7158.3 of the Health and Safety Code is amended to read:

14 7158.3. (a) The following definitions shall apply for purposes of this section:

15 (1) “Cosmetic surgery” means surgery that is performed to alter or reshape
16 normal structures of the body in order to improve appearance.

17 (2) “Donee” means a hospital, as defined in subdivision (f) of Section 7150.1, or
18 an organ procurement organization, as defined in subdivision (j) of Section
19 7150.1, or a tissue bank licensed pursuant to Chapter 4.1 (commencing with
20 Section 1635) of Division 2.

21 (3) “Reconstructive surgery” means surgery performed to correct or repair
22 abnormal structures of the body caused by congenital defects, developmental
23 abnormalities, trauma, infection, tumors, or disease to do either of the following:

24 (A) To improve function.

25 (B) To create a normal appearance, to the extent possible.

26 (b) For purposes of accepting anatomical gifts, as defined in subdivision (a) of
27 Section 7150.1, a donee shall do all of the following:

28 (1) Revise existing informed consent forms and procedures to advise a donor or,
29 if the donor is deceased, the donor’s representative, that tissue banks work with
30 both nonprofit and for-profit tissue processors and distributors, that it is possible
31 that donated skin may be used for cosmetic or reconstructive surgery purposes,
32 and that donated tissue may be used for transplants outside of the United States.

33 (2) The revised consent form or procedure shall separately allow the donor or
34 donor’s representative to withhold consent for any of the following:

35 (A) Donated skin to be used for cosmetic surgery purposes.

36 (B) Donated tissue to be used for applications outside of the United States.

37 (C) Donated tissue to be used by for-profit tissue processors and distributors.

38 (3) A donee shall be deemed to have complied with paragraph (2) by
39 designating tissue that has been donated with specific restrictions on its use. Once
40 the donee transfers the tissue to a separate entity, the donee’s responsibility for
41 compliance with any restrictions on the tissue ceases.

1 (4) The donor may recover, in a civil action against any individual or entity that
2 fails to comply with this subdivision, civil penalties to be assessed in an amount
3 not less than one thousand dollars (\$1,000) and not more than five thousand
4 dollars (\$5,000), plus court costs, as determined by the court. A separate penalty
5 shall be assessed for each individual or entity that fails to comply with this
6 subdivision. Any civil penalty provided under this paragraph shall be in addition
7 to any license revocation or suspension, if appropriate, authorized under
8 subdivision (c).

9 (5) If the consent of the donor or donor's representative is obtained in writing,
10 the donee shall offer to provide the donor or donor's representative with a copy of
11 the completed consent form. If consent is obtained by telephone, the donee shall
12 advise the donor or donor's representative that the conversation will be ~~tape~~ audio
13 recorded for verification and enforcement purposes, and shall offer to provide the
14 donor or donor's representative with a written copy of the recorded telephonic
15 consent form.

16 (c) Violation of this section by a licensed health care provider constitutes
17 unprofessional conduct.

18 (d) This section shall not apply to the removal of sperm or ova pursuant to
19 Section 2260 of the Business and Professions Code.

20 **Comment.** Subdivision (b)(5) of Section 7158.3 is amended to reflect advances in recording
21 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
22 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
23 technology," "audio recording," or "audio record," as context required).

24 **Health & Safety Code § 13220 (amended). Furnishing emergency procedures to persons**
25 **entering buildings**

26 SEC. _____. Section 13220 of the Health and Safety Code is amended to read:

27 13220. The owner or operator of any of the following buildings shall provide to
28 persons entering those buildings specific emergency procedures to be followed in
29 the event of fire, including procedures for handicapped and nonambulatory
30 persons:

31 (a) In the case of privately owned highrise structures, as defined in Section
32 13210, and office buildings two stories or more in height, the emergency
33 procedure information shall be made available in a conspicuous area of the
34 structure that is easily accessible to all persons entering the structure, designated
35 pursuant to regulations of the State Fire Marshal.

36 (b) In the case of hotels and motels, as defined in subdivision (b) of Section
37 25503.16 of the Business and Professions Code, the emergency procedure
38 information shall be posted in a conspicuous place in every room available for
39 rental in the hotel or motel, or, at the option of the hotel or motel operator, it shall
40 be provided through the use of brochures, pamphlets, ~~videotapes~~ video recordings,
41 or other means, pursuant to regulations adopted by the State Fire Marshal.

1 (c) In the case of apartment houses two stories or more in height that contain
2 three or more dwelling units, and where the front door opens into an interior
3 hallway or an interior lobby area, the emergency information shall be provided as
4 follows:

5 (1) Information for exiting the structure shall be posted on signs using
6 international symbols at every stairway landing, at every elevator landing, at an
7 intermediate point of any hallway exceeding 100 feet in length, at all hallway
8 intersections, and immediately inside all public entrances to the building.

9 (2) Information shall be provided to all tenants of record, through the use of
10 brochures, pamphlets, or ~~videotapes~~ video recordings, if any of these items is
11 available, or this requirement may be satisfied pursuant to regulations adopted by
12 the State Fire Marshal.

13 (3) If the owner or operator, or any individual acting on behalf of the owner or
14 operator, of an apartment house, as defined in this subdivision, negotiates a lease,
15 sublease, rental contract, or other term of tenancy contract or agreement in any
16 language other than English, the information required to be provided pursuant to
17 paragraph (2) of this subdivision shall be provided in English, in international
18 symbols, and in the four most common non-English languages spoken in
19 California, as determined by the State Fire Marshal.

20 (4) This subdivision shall become operative on July 1, 1996.

21 (d) On or before July 1, 1996, the State Fire Marshal shall adopt, for use in
22 apartment houses described in subdivision (c), a consumer-oriented model
23 brochure or pamphlet that includes general emergency procedure information in
24 English, in international symbols, and in the four most common non-English
25 languages spoken in California, as determined by the State Fire Marshal.

26 (e) An owner, agent, operator, translator, or transcriber who provides emergency
27 procedure information pursuant to this section in good faith and without gross
28 negligence shall be held harmless for any errors in the translation or transcription
29 of that emergency information. This limited immunity shall apply only to errors in
30 the translation or transcription and not to the providing of the information required
31 to be provided pursuant to this section.

32 (f) Unless expressly stated, nothing in this section shall be deemed to require an
33 owner or operator of any of the buildings listed in this section to provide
34 emergency procedure information in any language other than English, or through
35 the use of international symbols.

36 **Comment.** Section 13220 is amended to reflect advances in recording technology and for
37 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
38 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
39 “audio recording,” or “audio record,” as context required).

40 **Health & Safety Code § 13221 (amended). Regulations for furnishing emergency**
41 **procedures**

42 SEC. _____. Section 13221 of the Health and Safety Code is amended to read:

1 13221. The State Fire Marshal shall adopt regulations for the furnishing of
2 emergency procedure information according to this chapter. Those regulations
3 may include the general contents of brochures, pamphlets, signs, or ~~videotapes~~
4 video recordings used in furnishing emergency procedure information, but shall
5 provide for at least the following:

- 6 (a) A reference to the posting of exit plans for the structure.
- 7 (b) A general explanation of operation of the fire alarm system of the structure.
- 8 (c) Other fire emergency procedures.

9 **Comment.** Section 13221 is amended to reflect advances in recording technology and for
10 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
11 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
12 “audio recording,” or “audio record,” as context required).

13 **Health & Safety Code § 25201.11 (amended). Departmental copyright protection and other**
14 **rights**

15 SEC. _____. Section 25201.11 of the Health and Safety Code is amended to read:

16 25201.11. (a) Copyright protection and all other rights and privileges provided
17 pursuant to Title 17 of the United States Code are available to the department to
18 the fullest extent authorized by law, and the department may sell, lease, or license
19 for commercial or noncommercial use any work, including, but not limited to,
20 ~~videotapes~~ video recordings, ~~audiotapes~~ audio recordings, books, pamphlets, and
21 computer software as that term is defined in Section 6254.9 of the Government
22 Code, that the department produces whether the department is entitled to that
23 copyright protection or not.

24 (b) Any royalties, fees, or compensation of any type that is paid to the
25 department to make use of a work entitled to copyright protection shall be
26 deposited in the Hazardous Waste Control Account.

27 (c) Nothing in this section is intended to limit any powers granted to the
28 department pursuant to Section 6254.9 of the Government Code or any other
29 provision of law.

30 **Comment.** Section 25201.11 is amended to reflect advances in recording technology and for
31 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
32 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
33 “audio recording,” or “audio record,” as context required).

34 **Health & Safety Code § 40828 (amended). Testimony by members of public**

35 SEC. _____. Section 40828 of the Health and Safety Code is amended to read:

36 40828. (a) A hearing board shall allow interested members of the public a
37 reasonable opportunity to testify with regards to the matter under consideration,
38 and shall consider such testimony in making its decision.

39 (b) The hearing board shall prepare a record of the witnesses and the testimony
40 of each witness at the hearing. Such a record may be ~~a tape~~ an audio recording.
41 The record shall be retained by the hearing board while the variance is in effect, or
42 for the period of one year, whichever is longer.

1 **Comment.** Section 40828 is amended to reflect advances in recording technology and for
2 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
3 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
4 “audio recording,” or “audio record,” as context required).

5 **Health & Safety Code § 100171 (amended). Adjudicative hearing**

6 SEC. _____. Section 100171 of the Health and Safety Code is amended to read:

7 100171. Notwithstanding any other provision of law, whenever the department
8 is authorized or required by statute, regulation, due process (14th amendment,
9 United States Constitution; subdivision (a) of Section 7 of Article I, California
10 Constitution), or a contract, to conduct an adjudicative hearing leading to a final
11 decision of the director or the department, the following shall apply:

12 (a) The proceeding shall be conducted pursuant to the administrative
13 adjudication provisions of Chapter 4.5 (commencing with Section 11400) and
14 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
15 the Government Code, except as specified in this section.

16 (b) Notwithstanding Section 11502 of the Government Code, whenever the
17 department conducts a hearing under Chapter 4.5 (commencing with Section
18 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
19 Title 2 of the Government Code, the hearing shall be conducted before an
20 administrative law judge selected by the department and assigned to a hearing
21 office that complies with the procedural requirements of Chapter 4.5 (commencing
22 with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

23 (c) (1) Notwithstanding Section 11508 of the Government Code, whenever the
24 department conducts a hearing under Chapter 4.5 (commencing with Section
25 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
26 Title 2 of the Government Code, the time and place of the hearing shall be
27 determined by the staff assigned to the hearing office of the department, except as
28 provided in paragraph (2) or unless the department by regulation specifies
29 otherwise.

30 (2) Formal hearings requested by institutional Medi-Cal providers and health
31 facilities shall be held in Sacramento.

32 (d) (1) Unless otherwise specified in this section, the following sections of the
33 Government Code shall apply to any adjudicative hearing conducted by the
34 department only if the department has not, by regulation, specified an alternative
35 procedure for the particular type of hearing at issue: Section 11503 (relating to
36 accusations), Section 11504 (relating to statements of issues), Section 11505
37 (relating to the contents of the statement to respondent), Section 11506 (relating to
38 the notice of defense), Section 11507.6 (relating to discovery rights and
39 procedures), Section 11508 (relating to the time and place of hearings), and
40 Section 11516 (relating to amendment of accusations).

41 (2) Any alternative procedure specified by the department in accordance with
42 this subdivision shall conform to the purpose of the Government Code provision it

1 replaces insofar as it is possible to do so consistent with the specific procedural
2 requirements applicable to the type of hearing at issue.

3 (3) Any alternative procedures adopted by the department under this subdivision
4 shall not diminish the amount of notice given of the issues to be heard by the
5 department or deprive appellants of the right to discovery suitable to the particular
6 proceedings. Except as specified in paragraph (2) of subdivision (c), modifications
7 of timeframes or of the place of hearing made by regulation may not lengthen
8 timeframes within which the department is required to act nor require hearings to
9 be held at a greater distance from the appellant's place of residence or business
10 than is the case under the otherwise applicable Government Code provision.

11 (e) The specific timelines specified in Section 11517 of the Government Code
12 shall not apply to any adjudicative hearing conducted by the department to the
13 extent that the department has, by regulation, specified different timelines for the
14 particular type of hearing at issue.

15 (f) In the case of any adjudicative hearing conducted by the department,
16 "transcript," as used in subdivision (c) of Section 11517 of the Government Code,
17 shall be deemed to include any alternative form of recordation of the oral
18 proceedings, including, but not limited to, an ~~audiotape~~ audio recording.

19 (g) Pursuant to Section 11415.50 of the Government Code, the department may,
20 by regulation, provide for any appropriate informal procedure to be used for an
21 informal level of review that does not itself lead to a final decision of the
22 department or the director. The procedures specified in Article 10 (commencing
23 with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
24 Government Code shall not apply to any such an informal level of review.
25 Informal conferences concerning appeals by institutional Medi-Cal providers and
26 health facilities may be held in Sacramento or Los Angeles.

27 (h) Notwithstanding any other provision of law, any adjudicative hearing
28 conducted by the department that is conducted pursuant to a federal statutory or
29 regulatory requirement that contains specific procedures may be conducted
30 pursuant to those procedures to the extent they are inconsistent with the
31 procedures specified in this section.

32 (i) Nothing in this section shall apply to a fair hearing involving a Medi-Cal
33 beneficiary insofar as the hearing is, by agreement or otherwise, heard before an
34 administrative law judge employed by the State Department of Social Services, or
35 insofar as the hearing is being held pursuant to Division 4.5 (commencing with
36 Section 4500) of the Welfare and Institutions Code in connection with services
37 provided by the State Department of Developmental Services under applicable
38 federal medicaid waivers. Nothing in this subdivision shall be interpreted as
39 abrogating the authority of the State Department of Health Services as the single
40 state agency under the state medicaid plan.

41 (j) Nothing in this provision shall supersede express provisions of law that apply
42 to any hearing that is not adjudicative in nature or that does not involve due

1 process rights specific to an individual or specific individuals, as opposed to the
2 general public or a segment of the general public.

3 **Comment.** Subdivision (f) of Section 100171 is amended to reflect advances in recording
4 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
5 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
6 technology,” “audio recording,” or “audio record,” as context required).

7 **Health & Safety Code § 127240. (amended). Informal public hearing**

8 SEC. _____. Section 127240 of the Health and Safety Code is amended to read:

9 127240. (a) Notwithstanding subdivision (b), (c), (d), (e), or (f) of Section
10 127235, if the office orders a hearing on an application, the applicant may request
11 an informal hearing of the matter, described in this section, in lieu of, and in the
12 alternative to, the formal procedures described in subdivisions (b), (c), (d), (e), and
13 (f) of Section 127235.

14 (b) If an applicant requests an informal hearing and the office concurs with the
15 request, the office shall proceed as follows:

16 (1) Within five calendar days after receipt of the request for an informal public
17 hearing, the office shall order the informal public hearing by the service of a copy
18 of the order on the applicant. The order shall include the staff report and
19 recommendations prepared by staff of the office. Except as otherwise agreed by
20 the applicant and the office, the informal public hearing shall commence within 20
21 days of the date of the order. Upon the scheduling of the hearing, the office shall
22 promptly serve notice of the date, location, and time of the informal public hearing
23 upon the applicant. The office shall also publish a notice of the date, location, and
24 time of the informal public hearing in at least one newspaper of general circulation
25 in the health service area served by the applicant. The notice shall also include the
26 name and address of the applicant, the nature of the proposed project, and other
27 information, deemed relevant by the office.

28 (2) The informal public hearing shall not be conducted in accordance with
29 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
30 the Government Code. The informal public hearing shall be conducted by an
31 employee of the office designated by the office director. The person conducting
32 the informal public hearing may exercise all powers relating to the conduct of the
33 hearing, including the power to reasonably limit the length of oral presentations by
34 any person who has been allowed to make a statement.

35 The informal public hearing shall be conducted as follows:

36 (A) The applicant shall be given an opportunity to present the merits of the
37 project and to address the issues raised by the staff report and recommendations.

38 (B) The office staff shall be given an opportunity to present their analysis of the
39 project.

40 (C) Other interested persons shall be given an opportunity to present written or
41 oral statements.

1 (D) The person conducting the informal public hearing may question any person
2 making a written or oral statement and may give the applicant and office staff an
3 opportunity to question any person who has made a written or oral statement.

4 (E) The applicant and staff shall be given an opportunity to make closing
5 statements.

6 (F) The office shall make ~~a tape~~ an audio or video recording of the hearing, and
7 copies of the ~~tape~~ recording shall be made available at cost upon reasonable
8 notice. However, the applicant shall have a right to bring a certified shorthand
9 reporter to be used in place of the ~~tape~~ audio or video recording, provided that he
10 or she provides the office with a copy of the transcript.

11 (c) The informal public hearing shall conclude within 10 calendar days after
12 commencement of the hearing unless one of the following occurs:

13 (1) The applicant agrees to extend the time for conclusion of the hearing.

14 (2) The hearing is ongoing and continuing during consecutive business days, in
15 which case it shall be concluded as soon as reasonably practicable thereafter.

16 (d) Within 10 days after the conclusion of the informal public hearing, the
17 person conducting the hearing shall render a proposed decision supported by
18 findings of fact, based solely upon the record of the hearing. The proposed
19 decision shall be served upon the applicant and the office staff.

20 (e) The director shall make a final decision on an application within 10 calendar
21 days after issuance of the proposed decision. The decisions shall either approve
22 the application, approve it with modifications, reject it, or approve it with
23 conditions mutually agreed upon by the applicant and the office. The failure of any
24 applicant to fulfill the conditions under which the certificate of need was granted
25 shall constitute grounds for revocation of the certificate of need.

26 (f) Notice of the substance of the office's decisions shall be published in a
27 newspaper of general circulation within the health service area served by the
28 applicant, within 10 calendar days following the decision.

29 (g) Whether or not an informal hearing is granted shall be at the discretion of the
30 office.

31 **Comment.** Section 127240 is amended to reflect advances in recording technology and for
32 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
33 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
34 "audio recording," or "audio record," as context required).

35 Ins Code

36 **Ins. Code § 1758.97 (amended). Prerequisites to sale or offer to sell insurance**

37 SEC. _____. Section 1758.97 of the Insurance Code is amended to read:

38 1758.97. A credit insurance agent shall not sell or offer to sell insurance
39 pursuant to this article unless all of the following conditions are satisfied:

40 (a) The credit insurance agent provides brochures or other written materials to
41 the prospective purchaser that do all of the following:

1 (1) Summarize the material terms and conditions of coverage offered, including
2 the identity of the insurer.

3 (2) Describe the process for filing a claim, including a toll-free telephone
4 number to report a claim.

5 (3) Disclose any additional information on the price, benefits, exclusions,
6 conditions, or other limitations of those policies that the commissioner may by
7 rule prescribe.

8 (b) The credit insurance agent makes all of the following disclosures, either with
9 or as part of each individual policy or group certificate, or with a notice of
10 proposed insurance, or, if the insurance is sold at the same time and place as the
11 related credit transaction, in a statement acknowledged by the purchaser in writing
12 on a separate form, electronically, digitally, or by ~~tape~~ audio recording:

13 (1) That the purchase of the kinds of insurance prescribed in this article is not
14 required in order to secure the loan or an extension of credit.

15 (2) That the insurance coverage offered by the credit insurance agent may
16 provide a duplication of coverage already provided by a purchaser's other personal
17 insurance policies or by another source of coverage.

18 (3) That the endorsee is not qualified or authorized to evaluate the adequacy of
19 the purchaser's existing coverages, unless the individual is licensed pursuant to
20 Article 3 (commencing with Section 1631).

21 (4) That the customer may cancel the insurance at any time. If the customer
22 cancels within 30 days from the delivery of the insurance policy, certificate, or
23 notice of proposed insurance, the premium will be refunded in full. If the customer
24 cancels at any time thereafter, any unearned premium will be refunded in
25 accordance with applicable law.

26 (c) Evidence of coverage is provided to every person who elects to purchase that
27 coverage.

28 (d) Costs for the insurance are separately itemized in any loan, credit, or retail
29 agreement.

30 (e) The insurance is provided under an individual policy issued to the purchaser
31 or under a group or master policy issued to the organization licensed as a credit
32 insurance agent by an insurer authorized to transact the applicable kinds or types
33 of insurance in this state. Any of the conditions and disclosures specified in this
34 section shall be deemed satisfied if the consumer is otherwise provided with the
35 information required in this section by any other disclosures required by existing
36 federal or state law or regulations.

37 No statement, disclosure, or notice made for the purpose of compliance with
38 this section shall be construed to cause the policy form, certificate of insurance, or
39 notice of proposed insurance, by themselves, to be considered nonstandard forms,
40 as described in Article 6.9 (commencing with Section 2249) of Subchapter 2 of
41 Chapter 5 of Title 10 of the California Code of Regulations.

42 **Comment.** Subdivision (b) of Section 1758.97 is amended to reflect advances in recording
43 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068

1 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
2 technology,” “audio recording,” or “audio record,” as context required).

3 **Ins. Code § 2071.1 (amended). Examination of insured**

4 SEC. _____. Section 2071.1 of the Insurance Code is amended to read:

5 2071.1. (a) This section applies to an examination of an insured under oath
6 pursuant to Section 2071 labeled “Requirements in case loss occurs” and other
7 relevant provisions of that section, and to any policy that insures property and
8 contains a provision for examining an insured under oath, when the policy is
9 originated or renewed on and after January 1, 2002.

10 The following are among the rights of each insured who is requested to submit
11 to an examination under oath:

12 (1) An insurer that determines that it will conduct an examination under oath of
13 an insured shall notify the insured of that determination and shall include a copy of
14 this section in the notification.

15 (2) An insurer may conduct an examination under oath only to obtain
16 information that is relevant and reasonably necessary to process or investigate the
17 claim.

18 (3) An examination under oath may only be conducted upon reasonable notice,
19 at a reasonably convenient place and for a reasonable length of time.

20 (4) The insured may be represented by counsel and may record the examination
21 proceedings in their entirety.

22 (5) The insurer shall notify the insured that, upon request and free of charge, it
23 will provide the insured with a copy of the transcript of the proceedings and ~~a tape~~
24 an audio or video recording of the proceedings, if one exists. Where an insured
25 requests a copy of the transcript, the ~~tape recording~~, or both, of their examination
26 under oath, the insurer shall provide it within 10 business days of receipt by the
27 insurer or its counsel of the transcript, the ~~tape recording~~, or both. An insured may
28 make sworn corrections to the transcript so it accurately reflects the testimony
29 under oath.

30 (6) In an examination under oath, an insured may assert any objection that can
31 be made in a deposition under state or federal law. However, if as a result of
32 asserting an objection an insured fails to provide an answer to a material question,
33 and that failure prevents the insurer from being able to determine the extent of loss
34 and validity of the claim, the rights of the insured under the contract may be
35 affected.

36 (7) An insured who submits a fraudulent claim may be subject to all criminal
37 and civil penalties applicable under law.

38 (b) The department shall conduct a study quantifying the number of
39 examinations under oath performed by carriers regulated by the department and
40 the number of contacts made by consumers regarding alleged concerns with the
41 utilization of the examination under oath process for the resolution of pending
42 claims. The department shall report both the number of examinations under oath

1 performed by each carrier and the number of justified and unjustified claims
2 alleged by insureds as defined in the Insurance Code. To the best extent
3 practicable, the department shall also determine if any of these complaints also
4 resulted in suspected fraudulent claims with the department's fraud division.

5 (c) The department shall also survey licensed carriers as to the number of
6 suspected fraudulent claims under residential property insurance policies that are
7 submitted to the department's fraud division as required by law, and that resulted,
8 or eventually resulted, in the utilization of the examination under oath process.
9 Policies of residential property insurance shall be as defined in Section 10087.

10 (d) The department shall submit the findings of this report to the Chairs of the
11 Assembly and Senate Committees on Insurance no later than March 1, 2003.

12 **Comment.** Subdivision (a)(5) of Section 2071.1 is amended to reflect advances in recording
13 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
14 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
15 technology," "audio recording," or "audio record," as context required).

16 **Penal Code § 298.1 (amended). Refusal to give specimen, sample or impression**

17 SEC. _____. Section 298.1 of the Penal Code is amended to read:

18 298.1. (a) As of the effective date of this chapter, any person who refuses to give
19 any or all of the following, blood specimens, saliva samples, or thumb or palm
20 print impressions as required by this chapter, once he or she has received written
21 notice from the Department of Justice, the Department of Corrections and
22 Rehabilitation, any law enforcement personnel, or officer of the court that he or
23 she is required to provide specimens, samples, and print impressions pursuant to
24 this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of
25 the following, a blood specimen, saliva sample, or thumb or palm print impression
26 is punishable as a separate offense by both a fine of five hundred dollars (\$500)
27 and imprisonment of up to one year in a county jail, or if the person is already
28 imprisoned in the state prison, by sanctions for misdemeanors according to a
29 schedule determined by the Department of Corrections and Rehabilitation.

30 (b) (1) Notwithstanding subdivision (a), authorized law enforcement, custodial,
31 or corrections personnel, including peace officers as defined in Sections 830,
32 830.1, subdivision (d) of Section 830.2, Sections 830.5, 830.38, or 830.55, may
33 employ reasonable force to collect blood specimens, saliva samples, or thumb or
34 palm print impressions pursuant to this chapter from individuals who, after written
35 or oral request, refuse to provide those specimens, samples, or thumb or palm print
36 impressions.

37 (2) The withdrawal of blood shall be performed in a medically approved manner
38 in accordance with the requirements of paragraph (2) of subdivision (b) of Section
39 298.

40 (3) The use of reasonable force as provided in this subdivision shall be carried
41 out in a manner consistent with regulations and guidelines adopted pursuant to
42 subdivision (c).

1 (c) (1) The Department of Corrections Rehabilitation and the Division of
2 Juvenile Justice shall adopt regulations governing the use of reasonable force as
3 provided in subdivision (b), which shall include the following:

4 (A) The term “use of reasonable force” shall be defined as the force that an
5 objective, trained and competent correctional employee, faced with similar facts
6 and circumstances, would consider necessary and reasonable to gain compliance
7 with this chapter.

8 (B) The use of reasonable force shall not be authorized without the prior written
9 authorization of the supervising officer on duty. The authorization shall include
10 information that reflects the fact that the offender was asked to provide the
11 requisite specimen, sample, or impression and refused.

12 (C) The use of reasonable force shall be preceded by efforts to secure voluntary
13 compliance with this section.

14 (D) If the use of reasonable force includes a cell extraction, the regulations shall
15 provide that the extraction be ~~videotaped~~ video recorded.

16 (2) The Corrections Standards Authority shall adopt guidelines governing the
17 use of reasonable force as provided in subdivision (b) for local detention facilities,
18 which shall include the following:

19 (A) The term “use of reasonable force” shall be defined as the force that an
20 objective, trained and competent correctional employee, faced with similar facts
21 and circumstances, would consider necessary and reasonable to gain compliance
22 with this chapter.

23 (B) The use of reasonable force shall not be authorized without the prior written
24 authorization of the supervising officer on duty. The authorization shall include
25 information that reflects the fact that the offender was asked to provide the
26 requisite specimen, sample, or impression and refused.

27 (C) The use of reasonable force shall be preceded by efforts to secure voluntary
28 compliance with this section.

29 (D) If the use of reasonable force includes a cell extraction, the extraction shall
30 be ~~videotaped~~ video recorded.

31 (3) The Department of Corrections and Rehabilitation, the Division of Juvenile
32 Justice, and the Corrections Standards Authority shall report to the Legislature not
33 later than January 1, 2005, on the use of reasonable force pursuant to this section.
34 The report shall include, but is not limited to, the number of refusals, the number
35 of incidents of the use of reasonable force under this section, the type of force
36 used, the efforts undertaken to obtain voluntary compliance, if any, and whether
37 any medical attention was needed by the prisoner or personnel as a result of force
38 being used.

39 **Comment.** Section 298.1 is amended to reflect advances in recording technology and for
40 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
41 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
42 “audio recording,” or “audio record,” as context required).

1 **Penal Code § 599aa (amended). Seizure of birds, animals and related items**

2 SEC. _____. Section 599aa of the Penal Code is amended to read:

3 599aa. (a) Any authorized officer making an arrest under Section 597.5 shall,
4 and any authorized officer making an arrest under Section 597b, 597c, 597j, or
5 599a may, lawfully take possession of all birds or animals and all paraphernalia,
6 implements or other property or things used or employed, or about to be
7 employed, in the violation of any of the provisions of this code relating to the
8 fighting of birds or animals that can be used in animal or bird fighting, in training
9 animals or birds to fight, or to inflict pain or cruelty upon animals or birds in
10 respect to animal or bird fighting.

11 (b) Upon taking possession, the officer shall inventory the items seized and
12 question the persons present as to the identity of the owner or owners of the items.
13 The inventory list shall identify the location where the items were seized, the
14 names of the persons from whom the property was seized, and the names of any
15 known owners of the property.

16 Any person claiming ownership or possession of any item shall be provided with
17 a signed copy of the inventory list which shall identify the seizing officer and his
18 or her employing agency. If no person claims ownership or possession of the
19 items, a copy of the inventory list shall be left at the location from which the items
20 were seized.

21 (c) The officer shall file with the magistrate before whom the complaint against
22 the arrested person is made, a copy of the inventory list and an affidavit stating the
23 affiant's basis for his or her belief that the property and items taken were in
24 violation of this code. On receipt of the affidavit, the magistrate shall order the
25 items seized to be held until the final disposition of any charges filed in the case
26 subject to subdivision (e).

27 (d) All animals and birds seized shall, at the discretion of the seizing officer, be
28 taken promptly to an appropriate animal storage facility. For purposes of this
29 subdivision, an appropriate animal storage facility is one in which the animals or
30 birds may be stored humanely. However, if an appropriate animal storage facility
31 is not available, the officer may cause the animals or birds used in committing or
32 possessed for the purpose of the alleged offenses to remain at the location at which
33 they were found. In determining whether it is more humane to leave the animals or
34 birds at the location at which they were found than to take the animals or birds to
35 an animal storage facility, the officer shall, at a minimum, consider the difficulty
36 of transporting the animals or birds and the adequacy of the available animal
37 storage facility. When the officer does not seize and transport all animals or birds
38 to a storage facility, he or she shall do both of the following:

39 (1) Seize a representative sample of animals or birds for evidentiary purposes
40 from the animals or birds found at the site of the alleged offenses. The animals or
41 birds seized as a representative sample shall be transported to an appropriate
42 animal storage facility.

1 (2) Cause all animals or birds used in committing or possessed for the purpose
2 of the alleged offenses to be banded, tagged, or marked by microchip, and
3 photographed or ~~videotaped~~ video recorded for evidentiary purposes.

4 (e) (1) If ownership of the seized animals or birds cannot be determined after
5 reasonable efforts, the officer or other person named and designated in the order as
6 custodian of the animals or birds may, after holding the animals and birds for a
7 period of not less than 10 days, petition the magistrate for permission to humanely
8 destroy or otherwise dispose of the animals or birds. The petition shall be
9 published for three successive days in a newspaper of general circulation. The
10 magistrate shall hold a hearing on the petition not less than 10 days after seizure of
11 the animals or birds, after which he or she may order the animals or birds to be
12 humanely destroyed or otherwise disposed of, or to be retained by the officer or
13 person with custody until the conviction or final discharge of the arrested person.
14 No animal or bird may be destroyed or otherwise disposed of until 4 days after the
15 order.

16 (2) Paragraph (1) shall apply only to those animals and birds seized under any of
17 the following circumstances:

18 (A) After having been used in violation of any of the provisions of this code
19 relating to the fighting of birds or animals.

20 (B) At the scene or site of a violation of any of the provisions of this code
21 relating to the fighting of birds or animals.

22 (f) Upon the conviction of the arrested person, all property seized shall be
23 adjudged by the court to be forfeited and shall then be destroyed or otherwise
24 disposed of as the court may order. Upon the conviction of the arrested person, the
25 court may order the person to make payment to the appropriate public entity for
26 the costs incurred in the housing, care, feeding, and treatment of the animals or
27 birds. Each person convicted in connection with a particular animal or bird,
28 excluding any person convicted as a spectator pursuant to Section 597b or 597c, or
29 subdivision (b) of Section 597.5, may be held jointly and severally liable for
30 restitution pursuant to this subdivision. This payment shall be in addition to any
31 other fine or other sentence ordered by the court. The court shall specify in the
32 order that the public entity shall not enforce the order until the defendant satisfies
33 all other outstanding fines, penalties, assessments, restitution fines, and restitution
34 orders. The court may relieve any convicted person of the obligation to make
35 payment pursuant to this subdivision for good cause but shall state the reasons for
36 that decision in the record. In the event of the acquittal or final discharge without
37 conviction of the arrested person, the court shall, on demand, direct the delivery of
38 the property held in custody to the owner. If the owner is unknown, the court shall
39 order the animals or birds to be humanely destroyed or otherwise disposed of.

40 **Comment.** Subdivision (d)(2) of Section 599aa is amended to reflect advances in recording
41 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
42 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
43 technology,” “audio recording,” or “audio record,” as context required).

1 **Penal Code § 868.7 (amended). Closure of examination**

2 SEC. _____. Section 868.7 of the Penal Code is amended to read:

3 868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon
4 motion of the prosecutor, close the examination in the manner described in Section
5 868 during the testimony of a witness:

6 (1) Who is a minor or a dependent person with a substantial cognitive
7 impairment, as defined in paragraph (3) of subdivision (f) of Section 288, and is
8 the complaining victim of a sex offense, where testimony before the general public
9 would be likely to cause serious psychological harm to the witness and where no
10 alternative procedures, including, but not limited to, ~~videotaped~~ video recorded
11 deposition or contemporaneous examination in another place communicated to the
12 courtroom by means of closed-circuit television, are available to avoid the
13 perceived harm.

14 (2) Whose life would be subject to a substantial risk in appearing before the
15 general public, and where no alternative security measures, including, but not
16 limited to, efforts to conceal his or her features or physical description, searches of
17 members of the public attending the examination, or the temporary exclusion of
18 other actual or potential witnesses, would be adequate to minimize the perceived
19 threat.

20 (b) In any case where public access to the courtroom is restricted during the
21 examination of a witness pursuant to this section, a transcript of the testimony of
22 the witness shall be made available to the public as soon as is practicable.

23 This section shall become operative on January 1, 1987.

24 **Comment.** Section 868.7 is amended to reflect advances in recording technology and for
25 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
26 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
27 “audio recording,” or “audio record,” as context required).

28 **Penal Code § 1191.15 (amended). Victim statement**

29 SEC. _____. Section 1191.15 of the Penal Code is amended to read:

30 1191.15. (a) The court may permit the victim of any crime, or his or her parent
31 or guardian if the victim is a minor, or the next of kin of the victim if the victim
32 has died, to file with the court a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~
33 video recorded statement, or statement stored on a ~~CD-Rom, DVD,~~ or any other
34 recording medium acceptable to the court, expressing his or her views concerning
35 the crime, the person responsible, and the need for restitution, in lieu of or in
36 addition to the person personally appearing at the time of judgment and sentence.
37 The court shall consider the statement filed with the court prior to imposing
38 judgment and sentence.

39 Whenever an audio or video statement or statement stored on a ~~CD-Rom, DVD,~~
40 ~~or~~ other medium is filed with the court, a written transcript of the statement shall
41 also be provided by the person filing the statement, and shall be made available as
42 a public record of the court after the judgment and sentence have been imposed.

1 (b) Whenever a written, audio, or video statement or statement stored on a ~~CD~~
2 ~~Rom, DVD, or~~ other medium is filed with the court, it shall remain sealed until the
3 time set for imposition of judgment and sentence except that the court, the
4 probation officer, and counsel for the parties may view and listen to the statement
5 not more than two court days prior to the date set for imposition of judgment and
6 sentence.

7 (c) No person may, and no court shall, permit any person to duplicate, copy, or
8 reproduce by any audio or visual means any statement submitted to the court
9 under the provisions of this section.

10 (d) Nothing in this section shall be construed to prohibit the prosecutor from
11 representing to the court the views of the victim or his or her parent or guardian or
12 the next of kin.

13 (e) In the event the court permits an audio or video statement or statement stored
14 on a ~~CD Rom, DVD, or~~ other medium to be filed, the court shall not be
15 responsible for providing any equipment or resources needed to assist the victim in
16 preparing the statement.

17 **Comment.** Section 1191.15 is amended to reflect advances in recording technology and for
18 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
19 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
20 “audio recording,” or “audio record,” as context required).

21 **Penal Code § 1203.098. (amended). Batterers’ intervention program facilitators;**
22 **requirements**

23 SEC. _____. Section 1203.098 of the Penal Code is amended to read:

24 1203.098. (a) Unless otherwise provided, a person who works as a facilitator in
25 a batterers’ intervention program that provides programs for batterers pursuant to
26 subdivision (c) of Section 1203.097 shall complete the following requirements
27 before being eligible to work as a facilitator in a batterers’ intervention program:

28 (1) Forty hours of core-basic training. A minimum of eight hours of this
29 instruction shall be provided by a shelter-based or shelter-approved trainer. The
30 core curriculum shall include the following components:

31 (A) A minimum of eight hours in basic domestic violence knowledge focusing
32 on victim safety and the role of domestic violence shelters in a community-
33 coordinated response.

34 (B) A minimum of eight hours in multicultural, cross cultural, and multiethnic
35 diversity and domestic violence.

36 (C) A minimum of four hours in substance abuse and domestic violence.

37 (D) A minimum of four hours in intake and assessment, including the history of
38 violence and the nature of threats and substance abuse.

39 (E) A minimum of eight hours in group content areas focusing on gender roles
40 and socialization, the nature of violence, the dynamics of power and control, and
41 the affects of abuse on children and others as required by Section 1203.097.

42 (F) A minimum of four hours in group facilitation.

1 (G) A minimum of four hours in domestic violence and the law, ethics, all
2 requirements specified by the probation department pursuant to Section 1203.097,
3 and the role of batterers' intervention programs in a coordinated-community
4 response.

5 (H) Any person that provides documentation of coursework, or equivalent
6 training, that he or she has satisfactorily completed, shall be exempt from that part
7 of the training that was covered by the satisfactorily completed coursework.

8 (I) The coursework that this person performs shall count towards the continuing
9 education requirement.

10 (2) Fifty-two weeks or no less than 104 hours in six months, as a trainee in an
11 approved batterers' intervention program with a minimum of a two-hour group
12 each week. A training program shall include at least one of the following:

13 (A) Cofacilitation internship in which an experienced facilitator is present in the
14 room during the group session.

15 (B) Observation by a trainer of the trainee conducting a group session via a one-
16 way mirror.

17 (C) Observation by a trainer of the trainee conducting a group session via a
18 video or audio ~~tape~~ recording.

19 (D) Consultation and or supervision twice a week in a six-month program or
20 once a week in a 52-week program.

21 (3) An experienced facilitator is one who has the following qualifications:

22 (A) Documentation on file, approved by the agency, evidencing that the
23 experienced facilitator has the skills needed to provide quality supervision and
24 training.

25 (B) Documented experience working with batterers for three years, and a
26 minimum of two years working with batterer's groups.

27 (C) Documentation by January 1, 2003, of coursework or equivalent training
28 that demonstrates satisfactory completion of the 40-hour basic-core training.

29 (b) A facilitator of a batterers' intervention program shall complete, as a
30 minimum continuing education requirement, 16 hours annually of continuing
31 education in either domestic violence or a related field with a minimum of 8 hours
32 in domestic violence.

33 (c) A person or agency with a specific hardship may request the probation
34 department, in writing, for an extension of time to complete the training or to
35 complete alternative training options.

36 (d) (1) An experienced facilitator, as defined in paragraph (3) of subdivision (a),
37 is not subject to the supervision requirements of this section, if they meet the
38 requirements of subparagraph (C) of paragraph (3) of subdivision (a).

39 (2) This section does not apply to a person who provides batterers' treatment
40 through a jail education program if the person in charge of that program
41 determines that such person has adequate education or training in domestic
42 violence or a related field.

1 (e) A person who satisfactorily completes the training requirements of a county
2 probation department whose training program is equivalent to or exceeds the
3 training requirements of this act shall be exempt from the training requirements of
4 this act.

5 **Comment.** Subdivision (a)(2)(C) of Section 1203.098 is amended to reflect advances in
6 recording technology and for consistency of terminology. For a similar reform, see 2002 Cal.
7 Stat. ch. 1068 (replacing numerous references to “audiotape” in Civil Discovery Act with either
8 “audio technology,” “audio recording,” or “audio record,” as context required).

9 **Penal Code § 1346 (amended). Recording of testimony of minor or developmentally**
10 **disabled victim**

11 SEC. _____. Section 1346 of the Penal Code is amended to read:

12 1346. (a) When a defendant has been charged with a violation of Section 220,
13 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6,
14 where the victim either is a person 15 years of age or less or is developmentally
15 disabled as a result of mental retardation, as specified in subdivision (a) of Section
16 4512 of the Welfare and Institutions Code, the people may apply for an order that
17 the victim’s testimony at the preliminary hearing, in addition to being
18 stenographically recorded, be video recorded and preserved ~~on videotape~~.

19 (b) The application for the order shall be in writing and made three days prior to
20 the preliminary hearing.

21 (c) Upon timely receipt of the application, the magistrate shall order that the
22 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded
23 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to
24 the clerk of the court in which the action is pending.

25 (d) If at the time of trial the court finds that further testimony would cause the
26 victim emotional trauma so that the victim is medically unavailable or otherwise
27 unavailable within the meaning of Section 240 of the Evidence Code, the court
28 may admit the ~~videotape~~ video recording of the victim’s testimony at the
29 preliminary hearing as former testimony under Section 1291 of the Evidence
30 Code.

31 (e) Any ~~videotape which is taken~~ video recording made pursuant to this section
32 is subject to a protective order of the court for the purpose of protecting the
33 privacy of the victim. This subdivision does not affect the provisions of
34 subdivision (b) of Section 868.7.

35 (f) Any ~~videotape~~ video recording made pursuant to this section shall be made
36 available to the prosecuting attorney, the defendant, and his or her attorney for
37 viewing during ordinary business hours. Any ~~videotape~~ video recording which is
38 made available pursuant to this section is subject to a protective order of the court
39 for the purpose of protecting the privacy of the victim.

40 (g) The ~~tape~~ video recording shall be destroyed after five years have elapsed
41 from the date of entry of judgment; provided, however, that if an appeal is filed,

1 the ~~tape~~ video recording shall not be destroyed until a final judgment on appeal
2 has been rendered.

3 **Comment.** Section 1346 is amended to reflect advances in recording technology and for
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
6 “audio recording,” or “audio record,” as context required).

7 **Note.** The Commission invites comment from the Attorney General, criminal law
8 practitioners, and any other interested persons on whether allowing the recording authorized by
9 this section by means of technology that does not use videotape would cause any problems
10 relating to the privacy concerns of a testifying victim.

11 **Penal Code § 1346.1 (amended). Recording of testimony of victim of spousal rape or**
12 **infliction of corporal injury**

13 SEC. _____. Section 1346.1 of the Penal Code is amended to read:

14 1346.1. (a) When a defendant has been charged with a violation of Section 262
15 or subdivision (a) of Section 273.5, the people may apply for an order that the
16 victim’s testimony at the preliminary hearing, in addition to being
17 stenographically recorded, be video recorded and preserved ~~on videotape~~.

18 (b) The application for the order shall be in writing and made three days prior to
19 the preliminary hearing.

20 (c) Upon timely receipt of the application, the magistrate shall order that the
21 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded
22 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to
23 the clerk of the court in which the action is pending.

24 (d) If the victim’s prior testimony given at the preliminary hearing is admissible
25 pursuant to the Evidence Code, then the ~~videotape recording~~ video recording of
26 that testimony may be introduced as evidence at trial.

27 **Comment.** Section 1346.1 is amended to reflect advances in recording technology and for
28 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
29 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
30 “audio recording,” or “audio record,” as context required).

31 **Note.** The Commission invites comment from the Attorney General, criminal law
32 practitioners, and any other interested persons on whether allowing the recording authorized by
33 this section by means of technology that does not use videotape would cause any problems
34 relating to the privacy concerns of a testifying victim.

35 **Penal Code § 1347 (amended). Testimony of minors**

36 SEC. _____. Section 1347 of the Penal Code is amended to read:

37 1347. (a) It is the intent of the Legislature in enacting this section to provide the
38 court with discretion to employ alternative court procedures to protect the rights of
39 a child witness, the rights of the defendant, and the integrity of the judicial
40 process. In exercising its discretion, the court necessarily will be required to
41 balance the rights of the defendant or defendants against the need to protect a child
42 witness and to preserve the integrity of the court’s truthfinding function. This
43 discretion is intended to be used selectively when the facts and circumstances in

1 the individual case present compelling evidence of the need to use these
2 alternative procedures.

3 (b) Notwithstanding any other law, the court in any criminal proceeding, upon
4 written notice by the prosecutor made at least three days prior to the date of the
5 preliminary hearing or trial date on which the testimony of the minor is scheduled,
6 or during the course of the proceeding on the court's own motion, may order that
7 the testimony of a minor 13 years of age or younger at the time of the motion be
8 taken by contemporaneous examination and cross-examination in another place
9 and out of the presence of the judge, jury, defendant or defendants, and attorneys,
10 and communicated to the courtroom by means of closed-circuit television, if the
11 court makes all of the following findings:

12 (1) The minor's testimony will involve a recitation of the facts of any of the
13 following:

14 (A) An alleged sexual offense committed on or with the minor.

15 (B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of
16 which the minor is a victim.

17 (C) An alleged felony offense specified in Section 273a or 273d of which the
18 minor is a victim.

19 (2) The impact on the minor of one or more of the factors enumerated in
20 subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to
21 be so substantial as to make the minor unavailable as a witness unless closed-
22 circuit testimony is used.

23 (A) Testimony by the minor in the presence of the defendant would result in the
24 child suffering serious emotional distress so that the child would be unavailable as
25 a witness.

26 (B) The defendant used a deadly weapon in the commission of the offense.

27 (C) The defendant threatened serious bodily injury to the child or the child's
28 family, threatened incarceration or deportation of the child or a member of the
29 child's family, threatened removal of the child from the child's family, or
30 threatened the dissolution of the child's family in order to prevent or dissuade the
31 minor from attending or giving testimony at any trial or court proceeding, or to
32 prevent the minor from reporting the alleged sexual offense, or from assisting in
33 criminal prosecution.

34 (D) The defendant inflicted great bodily injury upon the child in the commission
35 of the offense.

36 (E) The defendant or his or her counsel behaved during the hearing or trial in a
37 way that caused the minor to be unable to continue his or her testimony.

38 In making the determination required by this section, the court shall consider the
39 age of the minor, the relationship between the minor and the defendant or
40 defendants, any handicap or disability of the minor, and the nature of the acts
41 charged. The minor's refusal to testify shall not alone constitute sufficient
42 evidence that the special procedure described in this section is necessary to obtain
43 the minor's testimony.

1 (3) The equipment available for use of closed-circuit television would accurately
2 communicate the image and demeanor of the minor to the judge, jury, defendant
3 or defendants, and attorneys.

4 (c) If the court orders the use of closed-circuit television, two-way closed-circuit
5 television shall be used, except that if the impact on the minor of one or more of
6 the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of
7 subdivision (b), is shown by clear and convincing evidence to be so substantial as
8 to make the minor unavailable as a witness even if two-way closed-circuit
9 television is used, one-way closed-circuit television may be used. The prosecution
10 shall give the defendant or defendants at least 30 days' written notice of the
11 prosecution's intent to seek the use of one-way closed-circuit television, unless
12 good cause is shown to the court why this 30-day notice requirement should not
13 apply.

14 (d) (1) The hearing on a motion brought pursuant to this section shall be
15 conducted out of the presence of the jury.

16 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the
17 court, in determining the merits of the motion, shall not compel the minor to
18 testify at the hearing; nor shall the court deny the motion on the ground that the
19 minor has not testified.

20 (3) In determining whether the impact on an individual child of one or more of
21 the five factors enumerated in paragraph (2) of subdivision (b) is so substantial
22 that the minor is unavailable as a witness unless two-way or one-way closed-
23 circuit television is used, the court may question the minor in chambers, or at some
24 other comfortable place other than the courtroom, on the record for a reasonable
25 period of time with the support person, the prosecutor, and defense counsel
26 present. The defendant or defendants shall not be present. The court shall conduct
27 the questioning of the minor and shall not permit the prosecutor or defense counsel
28 to examine the minor. The prosecutor and defense counsel shall be permitted to
29 submit proposed questions to the court prior to the session in chambers. Defense
30 counsel shall be afforded a reasonable opportunity to consult with the defendant or
31 defendants prior to the conclusion of the session in chambers.

32 (e) When the court orders the testimony of a minor to be taken in another place
33 outside of the courtroom, the court shall do all of the following:

34 (1) Make a brief statement on the record, outside of the presence of the jury, of
35 the reasons in support of its order. While the statement need not include traditional
36 findings of fact, the reasons shall be set forth with sufficient specificity to permit
37 meaningful review and to demonstrate that discretion was exercised in a careful,
38 reasonable, and equitable manner.

39 (2) Instruct the members of the jury that they are to draw no inferences from the
40 use of closed-circuit television as a means of facilitating the testimony of the
41 minor.

1 (3) Instruct respective counsel, outside of the presence of the jury, that they are
2 to make no comment during the course of the trial on the use of closed-circuit
3 television procedures.

4 (4) Instruct the support witness, outside of the presence of the jury, that he or
5 she is not to coach, cue, or in any way influence or attempt to influence the
6 testimony of the minor.

7 (5) Order that a complete record of the examination of the minor, including the
8 images and voices of all persons who in any way participate in the examination, be
9 ~~made~~ video recorded and preserved, ~~on videotape~~ in addition to being
10 stenographically recorded. The ~~videotape~~ video recording shall be transmitted to
11 the clerk of the court in which the action is pending and shall be made available
12 for viewing to the prosecuting attorney, the defendant or defendants, and his or her
13 attorney during ordinary business hours. The ~~videotape~~ video recording shall be
14 destroyed after five years have elapsed from the date of entry of judgment. If an
15 appeal is filed, the ~~tape~~ video recording shall not be destroyed until a final
16 judgment on appeal has been ordered. Any ~~videotape that is taken~~ video recording
17 made pursuant to this section is subject to a protective order of the court for the
18 purpose of protecting the privacy of the witness. This subdivision does not affect
19 the provisions of subdivision (b) of Section 868.7.

20 (f) When the court orders the testimony of a minor to be taken in another place
21 outside the courtroom, only the minor, a support person designated pursuant to
22 Section 868.5, a nonuniformed bailiff any technicians necessary to operate the
23 closed-circuit equipment, and, after consultation with the prosecution and the
24 defense, a representative appointed by the court, shall be physically present for the
25 testimony. A ~~videotape shall record~~ video recording shall be made of the image of
26 the minor and his or her testimony, and a separate ~~videotape shall record~~ video
27 recording shall be made of the image of the support person.

28 (g) When the court orders the testimony of a minor to be taken in another place
29 outside the courtroom, the minor shall be brought into the judge's chambers prior
30 to the taking of his or her testimony to meet for a reasonable period of time with
31 the judge, the prosecutor, and defense counsel. A support person for the minor
32 shall also be present. This meeting shall be for the purpose of explaining the court
33 process to the child and to allow the attorneys an opportunity to establish rapport
34 with the child to facilitate later questioning by closed-circuit television. No
35 participant shall discuss the defendant or defendants or any of the facts of the case
36 with the minor during this meeting.

37 (h) When the court orders the testimony of a minor to be taken in another place
38 outside the courtroom, nothing in this section prohibits the court from ordering the
39 minor to be brought into the courtroom for a limited purpose, including the
40 identification of the defendant or defendants as the court deems necessary.

41 (i) The examination shall be under oath, and the defendant or defendants shall be
42 able to see and hear the minor witness, and if two-way closed-circuit television is
43 used, the defendant's image shall be transmitted live to the witness.

1 (j) Nothing in this section affects the disqualification of witnesses pursuant to
2 Section 701 of the Evidence Code.

3 (k) The cost of examination by contemporaneous closed-circuit television
4 ordered pursuant to this section shall be borne by the court out of its existing
5 budget.

6 (l) Nothing in this section shall be construed to prohibit a defendant from being
7 represented by counsel during any closed-circuit testimony.

8 **Comment.** Section 1347 is amended to reflect advances in recording technology and for
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
10 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
11 “audio recording,” or “audio record,” as context required).

12 **Note.** The Commission invites comment from the Attorney General, criminal law
13 practitioners, and any other interested persons on whether allowing the recording authorized by
14 this section by means of technology that does not use videotape would cause any problems
15 relating to the privacy concerns of a testifying victim.

16 **Penal Code § 1347.5 (amended). Testimony of disabled victims**

17 SEC. _____. Section 1347.5 of the Penal Code is amended to read:

18 1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide
19 the court with discretion to modify court procedures, as a reasonable
20 accommodation, to assure that adults and children with disabilities who have been
21 victims of an alleged sexual or otherwise specified offense are able to participate
22 effectively in criminal proceedings. In exercising its discretion, the court shall
23 balance the rights of the defendant against the right of the victim who has a
24 disability to full access and participation in the proceedings, while preserving the
25 integrity of the court’s truthfinding function.

26 (1) For purposes of this section, the term “disability” is defined in paragraphs (1)
27 and (2) of subdivision (c) of Section 11135 of the Government Code.

28 (2) The right of the victim is not to confront the perpetrator, but derives under
29 both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the
30 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) as
31 a right to participate in or benefit from the same services or services that are equal
32 or as effective as those enjoyed by persons without disabilities.

33 (b) Notwithstanding any other law, in any criminal proceeding in which the
34 defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1,
35 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314,
36 Section 368, 647.6, or with any attempt to commit a crime listed in this
37 subdivision, committed with or upon a person with a disability, the court in its
38 discretion may make accommodations to support the person with a disability,
39 including, but not limited to, any of the following:

40 (1) Allow the person with a disability reasonable periods of relief from
41 examination and cross-examination during which he or she may retire from the
42 courtroom. The judge may also allow other witnesses in the proceeding to be
43 examined when the person with a disability retires from the courtroom.

1 (2) Allow the person with a disability to utilize a support person pursuant to
2 Section 868.5 or a regional center representative providing services to a
3 developmentally disabled individual pursuant to Article 1 (commencing with
4 Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of
5 Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of,
6 allowing the person with a disability to utilize a support person or regional center
7 representative pursuant to this paragraph, the court may allow the person with a
8 disability to utilize a person necessary to facilitate the communication or physical
9 needs of the person with a disability.

10 (3) Notwithstanding Section 68119 of the Government Code, the judge may
11 remove his or her robe if the judge believes that this formal attire prevents full
12 participation of the person with a disability because it is intimidating to him or her.

13 (4) The judge, parties, witnesses, support persons, and court personnel may be
14 relocated within the courtroom to facilitate a more comfortable and personal
15 environment for the person with a disability as well as accommodating any
16 specific requirements for communication by that person.

17 (c) The prosecutor may apply for an order that the testimony of the person with
18 a disability at the preliminary hearing, in addition to being stenographically
19 recorded, be video recorded and preserved ~~on videotape~~.

20 (1) The application for the order shall be in writing and made three days prior to
21 the preliminary hearing.

22 (2) Upon timely receipt of the application, the judge shall order that the
23 testimony of the person with a disability given at the preliminary hearing be ~~taken~~
24 video recorded and preserved ~~on videotape~~. The ~~videotape~~ video recording shall
25 be transmitted to the clerk of the court in which the action is pending.

26 (3) If at the time of trial the court finds that further testimony would cause the
27 person with a disability emotional trauma so that he or she is medically
28 unavailable or otherwise unavailable within the meaning of Section 240 of the
29 Evidence Code, the court may admit the ~~videotape~~ video recording of his or her
30 testimony at the preliminary hearing as former testimony under Section 1291 of
31 the Evidence Code.

32 (4) Any ~~videotape that is taken~~ video recording made pursuant to this
33 subdivision is subject to a protective order of the court for the purpose of
34 protecting the privacy of the person with a disability. This subdivision does not
35 affect the provisions of subdivision (b) of Section 868.7.

36 (d) Notwithstanding any other law, the court in any criminal proceeding, upon
37 written notice of the prosecutor made at least three days prior to the date of the
38 preliminary hearing or trial date on which the testimony of the person with a
39 disability is scheduled, or during the course of the proceeding on the court's own
40 motion, may order that the testimony of the person with a disability be taken by
41 contemporaneous examination and cross-examination in another place and out of
42 the presence of the judge, jury, and defendant, and communicated to the

1 courtroom by means of two-way closed-circuit television, if the court makes all of
2 the following findings:

3 (1) The person with a disability will be called on to testify concerning facts of an
4 alleged sexual offense, or other crime as specified in subdivision (b), committed
5 on or with that person.

6 (2) The impact on the person with a disability of one or more of the factors
7 enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and
8 convincing evidence to be so substantial as to make the person with a disability
9 unavailable as a witness unless closed-circuit television is used. The refusal of the
10 person with a disability to testify shall not alone constitute sufficient evidence that
11 the special procedure described in this subdivision is necessary in order to
12 accommodate the disability. The court may take into consideration the relationship
13 between the person with a disability and the defendant or defendants.

14 (A) Threats of serious bodily injury to be inflicted on the person with a disability
15 or a family member, of incarceration, institutionalization, or deportation of the
16 person with a disability or a family member, or of removal of the person with a
17 disability from his or her residence by withholding needed services when the
18 threats come from a service provider, in order to prevent or dissuade the person
19 with a disability from attending or giving testimony at any trial or court
20 proceeding or to prevent that person from reporting the alleged offense or from
21 assisting in criminal prosecution.

22 (B) Use of a firearm or any other deadly weapon during the commission of the
23 crime.

24 (C) Infliction of great bodily injury upon the person with a disability during the
25 commission of the crime.

26 (D) Conduct on the part of the defendant or defense counsel during the hearing
27 or trial that causes the person with a disability to be unable to continue his or her
28 testimony.

29 (e) (1) The hearing on the motion brought pursuant to this subdivision shall be
30 conducted out of the presence of the jury.

31 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the
32 court, in determining the merits of the motion, shall not compel the person with a
33 disability to testify at the hearing; nor shall the court deny the motion on the
34 ground that the person with a disability has not testified.

35 (3) In determining whether the impact on an individual person with a disability
36 of one or more of the factors enumerated under paragraph (2) of subdivision (d) is
37 so substantial that the person is unavailable as a witness unless the closed-circuit
38 television procedure is employed, the court may question the person with a
39 disability in chambers, or at some other comfortable place other than the
40 courtroom, on the record for a reasonable period of time with the support person
41 described under paragraph (2) of subdivision (b), the prosecutor, and defense
42 counsel present. At this time the court shall explain the process to the person with
43 a disability. The defendant or defendants shall not be present; however, the

1 defendant or defendants shall have the opportunity to contemporaneously observe
2 the proceedings by closed-circuit television. Defense counsel shall be afforded a
3 reasonable opportunity to consult with the defendant or defendants prior to the
4 conclusion of the session in chambers.

5 (f) When the court orders the testimony of a victim who is a person with a
6 disability to be taken in another place outside of the courtroom, the court shall do
7 all of the following:

8 (1) Make a brief statement on the record, outside of the presence of the jury, of
9 the reasons in support of its order. While the statement need not include traditional
10 findings of fact, the reasons shall be set forth with sufficient specificity to permit
11 meaningful review and to demonstrate that discretion was exercised in a careful,
12 reasonable, and equitable manner.

13 (2) Instruct the members of the jury that they are to draw no inferences from the
14 use of closed-circuit television as a means of assuring the full participation of the
15 victim who is a person with a disability by accommodating that individual's
16 disability.

17 (3) Instruct respective counsel, outside of the presence of the jury, that they are
18 to make no comment during the course of the trial on the use of closed-circuit
19 television procedures.

20 (4) Instruct the support person, if the person is part of the court's
21 accommodation of the disability, outside of the presence of the jury, that he or she
22 is not to coach, cue, or in any way influence or attempt to influence the testimony
23 of the person with a disability.

24 (5) Order that a complete record of the examination of the person with a
25 disability, including the images and voices of all persons who in any way
26 participate in the examination, be made and preserved ~~on videotape~~ by video
27 recording in addition to being stenographically recorded. The ~~videotape~~ video
28 recording shall be transmitted to the clerk of the court in which the action is
29 pending and shall be made available for viewing to the prosecuting attorney, the
30 defendant, and his or her attorney, during ordinary business hours. The ~~videotape~~
31 video recording shall be destroyed after five years have elapsed from the date of
32 entry of judgment. If an appeal is filed, the ~~tape~~ video recording shall not be
33 destroyed until a final judgment on appeal has been ordered. Any ~~videotape that is~~
34 ~~taken~~ video recording made pursuant to this section is subject to a protective order
35 of the court for the purpose of protecting the privacy of the person with a
36 disability. This subdivision does not affect the provisions of subdivision (b) of
37 Section 868.7.

38 (g) When the court orders the testimony of a victim who is a person with a
39 disability to be taken in another place outside the courtroom, nothing in this
40 section shall prohibit the court from ordering the victim to appear in the courtroom
41 for a limited purpose, including the identification of the defendant or defendants as
42 the court deems necessary.

1 (h) The examination shall be under oath, and the defendant shall be able to see
2 and hear the person with a disability. If two-way closed-circuit television is used,
3 the defendant's image shall be transmitted live to the person with a disability.

4 (i) Nothing in this section shall affect the disqualification of witnesses pursuant
5 to Section 701 of the Evidence Code.

6 (j) The cost of examination by contemporaneous closed-circuit television
7 ordered pursuant to this section shall be borne by the court out of its existing
8 budget.

9 (k) This section shall not be construed to obviate the need to provide other
10 accommodations necessary to ensure accessibility of courtrooms to persons with
11 disabilities nor prescribe a lesser standard of accessibility or usability for persons
12 with disabilities than that provided by Title II of the Americans with Disabilities
13 Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal regulations adopted
14 pursuant to that act.

15 (l) The Judicial Council shall report to the Legislature, no later than two years
16 after the enactment of this subdivision, on the frequency of the use and
17 effectiveness of admitting the ~~videotape~~ video recording of testimony by means of
18 closed-circuit television.

19 **Comment.** Section 1347.5 is amended to reflect advances in recording technology and for
20 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
21 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"
22 "audio recording," or "audio record," as context required).

23 **Note.** The Commission invites comment from the Attorney General, criminal law
24 practitioners, and any other interested persons on whether allowing the recording authorized by
25 this section by means of technology that does not use videotape would cause any problems
26 relating to the privacy concerns of a testifying victim.

27 **Penal Code § 3043 (amended). Hearing relating to parole suitability or setting of parole date**

28 SEC. _____. Section 3043 of the Penal Code is amended to read:

29 3043. (a) Upon request, notice of any hearing to review or consider the parole
30 suitability or the setting of a parole date for any prisoner in a state prison shall be
31 sent by the Board of Prison Terms at least 30 days before the hearing to any victim
32 of a crime committed by the prisoner, or to the next of kin of the victim if the
33 victim has died. The requesting party shall keep the board apprised of his or her
34 current mailing address.

35 (b) The victim, next of kin, two members of the victim's immediate family, or
36 two representatives designated for a particular hearing by the victim or, in the
37 event the victim is deceased or incapacitated, by the next of kin in writing prior to
38 the hearing have the right to appear, personally or by counsel, at the hearing and to
39 adequately and reasonably express his, her, or their views concerning the crime
40 and the person responsible, except that any statement provided by a representative
41 designated by the victim or next of kin shall be limited to comments concerning
42 the effect of the crime on the victim.

1 (c) A representative designated by the victim or the victim's next of kin for
2 purposes of this section must be either a family or household member of the
3 victim. The board may not permit a representative designated by the victim or the
4 victim's next of kin to provide testimony at a hearing, or to submit a statement to
5 be included in the hearing as provided in Section 3043.2, if the victim, next of kin,
6 or a member of the victim's immediate family is present at the hearing, or if the
7 victim, next of kin, or a member of the victim's immediate family has submitted a
8 statement as described in Section 3043.2.

9 (d) Nothing in this section is intended to allow the board to permit a victim's
10 representative to attend a particular hearing if the victim, next of kin, or a member
11 of the victim's immediate family is present at any hearing covered in this section,
12 or if the victim, next of kin, or member of the victim's immediate family has
13 submitted a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~ video recorded
14 statement.

15 (e) The board, in deciding whether to release the person on parole, shall consider
16 the statements of the victim or victims, next of kin, immediate family members of
17 the victim, and the designated representatives of the victim or next of kin, if
18 applicable, made pursuant to this section and shall include in its report a statement
19 of whether the person would pose a threat to public safety if released on parole.

20 In those cases where there are more than two immediate family members of the
21 victim who wish to attend any hearing covered in this section, the board may, in
22 its discretion, allow attendance of additional immediate family members or limit
23 attendance to the following order of preference: spouse, children, parents, siblings,
24 grandchildren, and grandparents.

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

29 **Comment.** Subdivision (d) of Section 3043 is amended to reflect advances in recording
30 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
31 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio
32 technology," "audio recording," or "audio record," as context required).

33 **Pub. Res. Code § 4423.1 (amended). Suspension, restriction, or prohibition of permit**
34 **burning**

35 SEC. _____. Section 4423.1 of the Public Resources Code is amended to read:

36 4423.1. Burning under permit by any person on public or private lands, except
37 within incorporated cities, may be suspended, restricted, or otherwise prohibited
38 by proclamation. Any of the following public officers may issue a proclamation,
39 which shall be applicable within their respective jurisdictions:

40 (a) The director or his or her designee.

41 (b) Any county fire warden with the approval of the director.

1 (c) The federal officers directing activities within California of the United States
2 Bureau of Land Management, the National Park Service, and the United States
3 Forest Service.

4 The proclamation may be issued when, in the judgment of the issuing public
5 official, the menace of destruction by fire to life, improved property, or natural
6 resources is, or is forecast to become, extreme due to critical fire weather, fire
7 suppression forces being heavily committed to control fires already burning, acute
8 dryness of the vegetation, or other factors that may cause the rapid spread of fire.
9 A proclamation is effective on issuance or at a time specified therein and shall
10 remain in effect until a proclamation removing the suspension, restriction, or
11 prohibition is issued. The proclamation may be effective for a single day or longer.
12 The proclamation shall declare the conditions that necessitate its issuance,
13 designate the geographic area to which it applies, require that all or specified
14 burning under permit be suspended, restricted, or prohibited until the conditions
15 necessitating the proclamation abate, and identify the public official issuing the
16 proclamation. The proclamation may be in the form of a verbal or ~~tape-recorded~~
17 audio recorded telephone message, a press release, or a posted order.

18 The proclamation may be issued without complying with Chapter 3.5
19 (commencing with Section 11340) and Chapter 5 (commencing with Section
20 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

21 **Comment.** Subdivision (c) of Section 4423.1 is amended to reflect advances in recording
22 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068
23 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio
24 technology,” “audio recording,” or “audio record,” as context required).

25 **Rev. & Tax Code § 1611 (amended). Record of hearing**

26 SEC. _____. Section 1611 of the Revenue and Taxation Code is amended to read:
27 1611. The county board shall make a record of the hearing and, upon request,
28 shall furnish the party with ~~a tape~~ an audio recording or a transcript thereof at his
29 expense. Request for ~~a tape~~ an audio recording or a transcript may be made at any
30 time, but not later than 60 days following the final determination by the county
31 board.

32 **Comment.** Section 1611 is amended to reflect advances in recording technology and for
33 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
34 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
35 “audio recording,” or “audio record,” as context required).

36 **Welf. & Inst. Code § 19639 (amended). Rules and regulations**

37 SEC. _____. Section 19639 of the Welfare and Institutions Code is amended to
38 read:

39 19639. (a) The director shall adopt and promulgate necessary rules and
40 regulations, in compliance with Chapter 3.5 (commencing with Section 11340) of
41 Part 1 of Division 3 of Title 2 of the Government Code, and do all things

1 necessary and proper to carry out this article. The director shall review these
2 regulations for possible revision at least every three years.

3 (b) These regulations shall include, but not be limited to:

4 (1) Uniform procedures for vendor application and termination.

5 (2) Criteria and standards for selecting vendors and matching vendors to
6 facilities which shall ensure that the most qualified person is selected for a facility.

7 (3) Equipment life standards and service standards for the inventory, repair, and
8 purchase of equipment, as required under subdivision (a) of Section 19626.5.

9 (4) The minimum requirements for installation of a facility.

10 (5) A fair minimum of return to vendors.

11 (6) Standards for training, in-service retraining, and upward mobility.

12 (7) The policies and procedures used by the department for collection and
13 deposit or disbursement of all vending facility income, including, but not limited
14 to, the frequency, rules regarding, and method of collection of funds from facilities
15 operated by licensed blind vendors and facilities operated by other individuals or
16 entities.

17 (c) The director shall provide a written copy of all rules and regulations adopted
18 pursuant to this section to all vendors. Upon request by a vendor, the rules and
19 regulations shall be supplied to the vendor ~~on cassette tapes~~ in an audio recording
20 in lieu of the written copy. In addition, the director shall notify all vendors of any
21 proposed changes to the rules and regulations.

22 **Comment.** Section 19639 is amended to reflect advances in recording technology and for
23 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing
24 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”
25 “audio recording,” or “audio record,” as context required).

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