

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Nonsubstantive Reorganization of Deadly Weapon Statutes: Conforming Revisions

February 2009

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 **May 1, 2009.**

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 Legislature has directed the Law Revision Commission to “study, report on, and prepare recommended legislation by July 1, 2009, concerning the revision of the portions of the Penal Code relating to the control of deadly weapons....” 2006 Cal. Stat. res. ch. 128. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes, without making any change to criminal liability under those statutes.

Pursuant to the legislative directive and in accordance with its normal study process, the Commission has issued a tentative recommendation proposing nonsubstantive reforms of the deadly weapon statutes. Enactment of that proposal would necessitate conforming revisions of numerous other provisions in the codes. A draft of the conforming revisions is set forth below.

The Commission is soliciting comment on the tentative recommendation and on the proposed conforming revisions set forth below. The comment deadline is **May 1, 2009**.

The tentative recommendation proposing nonsubstantive reorganization of the deadly weapon statutes is available by following the “deadly weapons” link on the Commission’s homepage (www.clrc.ca.gov). The proposal is also available in hard copy form from the California Law Revision Commission, 4000 Middlefield Road, Room D-2, Palo Alto, CA 94303-4739.

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PROPOSED LEGISLATION

BUSINESS & PROFESSIONS CODE

1 **Bus. & Prof. Code § 7542.1 (amended). Licensee or employee of licensee carrying tear gas**
2 **or other nonlethal chemical agent**

3 SEC. _____. Section 7542.1 of the Business and Professions Code is amended to
4 read:

5 7542.1. Every licensee and any person employed and compensated by a licensee
6 who in the course of ~~such~~ that employment or business carries tear gas or any
7 other nonlethal chemical agent shall complete the required course pursuant to
8 Section ~~12403.5~~ 22835 of the Penal Code.

9 **Comment.** Section 7542.1 is amended to reflect nonsubstantive reorganization of the statutes
10 governing control of deadly weapons. The section is also amended to make a technical revision.

11 **Bus. & Prof. Code § 7581 (amended). Rules director may adopt and enforce**

12 SEC. _____. Section 7581 of the Business and Professions Code is amended to
13 read:

14 7581. The director may adopt and enforce reasonable rules, as follows:

15 (a) Classifying licensees according to the type of business regulated by this
16 chapter in which they are engaged, including, but not limited to, persons employed
17 by any lawful business as security guards or patrolpersons, and armored contract
18 carriers and limiting the field and scope of the operations of a licensee to those in
19 which he or she is classified and qualified to engage.

20 (b) Fixing the qualifications of licensees and managers, in addition to those
21 prescribed in this chapter, necessary to promote and protect the public welfare.

22 (c) Carrying out generally the provisions of this chapter, including regulation of
23 the conduct of licensees.

24 (d) Establishing the qualifications that any person employed by a private patrol
25 operator or any lawful business as a security guard or patrolperson, or employed
26 by an armored contract carrier, must meet as a condition of becoming eligible to
27 carry firearms pursuant to ~~subdivision (d) of Section 12031~~ Section 26030 of the
28 Penal Code.

29 (e) Requiring each uniformed employee of a private patrol operator and each
30 armored vehicle guard, as defined in this chapter, and any other person employed
31 and compensated by a private patrol operator or any lawful business as a security
32 guard or patrolperson and who in the course of this employment carries a deadly
33 weapon to be registered with the bureau upon application on a form prescribed by
34 the director accompanied by the registration fee and by two classifiable sets of
35 fingerprints of the applicant or its equivalent as determined by the director and
36 approved by the Department of Justice, establishing the term of the registration for
37 a period of not less than two nor more than four years, and providing for the

1 renewal thereof upon proper application and payment of the renewal fee. The
2 director may, after opportunity for a hearing, refuse this registration to any person
3 who lacks good moral character, and may impose reasonable additional
4 requirements as are necessary to meet local needs that are not inconsistent with the
5 provisions of this chapter.

6 (f) Establishing procedures whereby the local authorities of any city, county, or
7 city and county may file charges with, or any person in this state, may file a
8 complaint with the director alleging that any licensed private patrol operator,
9 registered security guard, or patrolperson, or anyone who is an applicant for
10 registration or licensure with the bureau, fails to meet standards for registration or
11 licensure, or violates any provision of this chapter, and providing further for the
12 investigation of the charges and a response to the charging or complaining party in
13 the manner described in subdivision (b) of Section 129.

14 (g) Requiring private patrol operators and any lawful business to maintain
15 detailed records identifying all firearms in their possession or under their control,
16 and the employees or persons authorized to carry or have access to those firearms.

17 **Comment.** Subdivision (d) of Section 7581 is amended to reflect nonsubstantive
18 reorganization of the statutes governing control of deadly weapons.

19 **Bus. & Prof. Code § 7582.2 (amended). Application of chapter**

20 SEC. _____. Section 7582.2 of the Business and Professions Code is amended to
21 read:

22 7582.2. This chapter does not apply to the following:

23 (a) A person who does not meet the requirements to be a proprietary private
24 security officer, as defined in Section 7574.1, and is employed exclusively and
25 regularly by any employer who does not provide contract security services for
26 other entities or persons, in connection with the affairs of the employer only and
27 where there exists an employer-employee relationship if that person at no time
28 carries or uses any deadly weapon in the performance of his or her duties. For
29 purposes of this subdivision, “deadly weapon” is defined to include any instrument
30 or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub,
31 sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm,
32 any knife having a blade longer than five inches, any razor with an unguarded
33 blade and any metal pipe or bar used or intended to be used as a club.

34 (b) An officer or employee of the United States of America, or of this state or a
35 political subdivision thereof, while the officer or employee is engaged in the
36 performance of his or her official duties, including uniformed peace officers
37 employed part time by a public agency pursuant to a written agreement between a
38 chief of police or sheriff and the public agency, provided the part-time
39 employment does not exceed 50 hours in any calendar month.

40 (c) A person engaged exclusively in the business of obtaining and furnishing
41 information as to the financial rating of persons.

1 (d) A charitable philanthropic society or association duly incorporated under the
2 laws of this state that is organized and maintained for the public good and not for
3 private profit.

4 (e) Patrol special police officers appointed by the police commission of any city,
5 county, or city and county under the express terms of its charter who also under
6 the express terms of the charter (1) are subject to suspension or dismissal after a
7 hearing on charges duly filed with the commission after a fair and impartial trial,
8 (2) must be not less than 18 years of age nor more than 40 years of age, (3) must
9 possess physical qualifications prescribed by the commission, and (4) are
10 designated by the police commission as the owners of a certain beat or territory as
11 may be fixed from time to time by the police commission.

12 (f) An attorney at law in performing his or her duties as an attorney at law.

13 (g) A collection agency or an employee thereof while acting within the scope of
14 his or her employment, while making an investigation incidental to the business of
15 the agency, including an investigation of the location of a debtor or his or her
16 property where the contract with an assignor creditor is for the collection of claims
17 owed or due or asserted to be owed or due or the equivalent thereof.

18 (h) Admitted insurers and agents and insurance brokers licensed by the state,
19 performing duties in connection with insurance transacted by them.

20 (i) Any bank subject to the jurisdiction of the Commissioner of Financial
21 Institutions of the State of California under Division 1 (commencing with Section
22 99) of the Financial Code or the Comptroller of Currency of the United States.

23 (j) A person engaged solely in the business of securing information about
24 persons or property from public records.

25 (k) A peace officer of this state or a political subdivision thereof while the peace
26 officer is employed by a private employer to engage in off-duty employment in
27 accordance with Section 1126 of the Government Code. However, nothing herein
28 shall exempt ~~such a~~ peace officer who either contracts for his or her services or the
29 services of others as a private patrol operator or contracts for his or her services as
30 or is employed as an armed private security officer. For purposes of this
31 subdivision, "armed security officer" means an individual who carries or uses a
32 firearm in the course and scope of that contract or employment.

33 (l) A retired peace officer of the state or political subdivision thereof when the
34 retired peace officer is employed by a private employer in employment approved
35 by the chief law enforcement officer of the jurisdiction where the employment
36 takes place, provided that the retired officer is in a uniform of a public law
37 enforcement agency, has registered with the bureau on a form approved by the
38 director, and has met any training requirements or their equivalent as established
39 for security personnel under Section 7583.5. This officer may not carry a loaded or
40 concealed firearm unless he or she is exempted under the provisions of ~~subdivision~~
41 ~~(a) of Section 12027~~ Article 2 (commencing with Section 25450) of Chapter 2 of
42 Division 5 of Title 4 of Part 6 of the Penal Code or paragraph (1) of subdivision
43 (b) of Section 12031 Sections 25900 to 25910, inclusive, of the Penal Code or has

1 met the requirements set forth in ~~Section 12033~~ subdivision (d) of Section 26030
2 of the Penal Code. However, nothing herein shall exempt the retired peace officer
3 who contracts for his or her services or the services of others as a private patrol
4 operator.

5 (m) A licensed insurance adjuster in performing his or her duties within the
6 scope of his or her license as an insurance adjuster.

7 (n) Any savings association subject to the jurisdiction of the Commissioner of
8 Financial Institutions or the Office of Thrift Supervision.

9 (o) Any secured creditor engaged in the repossession of the creditor's collateral
10 and any lessor engaged in the repossession of leased property in which it claims an
11 interest.

12 (p) A peace officer in his or her official police uniform acting in accordance
13 with subdivisions (c) and (d) of Section 70 of the Penal Code.

14 (q) An unarmed, uniformed security person employed exclusively and regularly
15 by a motion picture studio facility employer who does not provide contract
16 security services for other entities or persons in connection with the affairs of that
17 employer only and where there exists an employer-employee relationship if that
18 person at no time carries or uses any deadly weapon, as defined in subdivision (a),
19 in the performance of his or her duties, which may include, but are not limited to,
20 the following business purposes:

21 (1) The screening and monitoring access of employees of the same employer.

22 (2) The screening and monitoring access of prearranged and preauthorized
23 invited guests.

24 (3) The screening and monitoring of vendors and suppliers.

25 (4) Patrolling the private property facilities for the safety and welfare of all who
26 have been legitimately authorized to have access to the facility.

27 (r) The changes made to this section by the act adding this subdivision during
28 the 2005-06 Regular Session of the Legislature shall apply as follows:

29 (1) On and after July 1, 2006, to a person hired as a security officer on and after
30 January 1, 2006.

31 (2) On and after January 1, 2007, to a person hired as a security officer before
32 January 1, 2006.

33 **Comment.** Subdivision (k) of Section 7582.2 is amended to make a technical revision.

34 Subdivision (l) is amended to reflect nonsubstantive reorganization of the statutes governing
35 control of deadly weapons.

36 **Bus. & Prof. Code § 7583.12 (amended). Requirements for employee or licensee to carry**
37 **firearm**

38 SEC. ____ . Section 7583.12 of the Business and Professions Code is amended to
39 read:

40 7583.12. (a) No employee of a licensee shall carry or use a firearm unless the
41 employee has in his or her possession both of the following:

42 (1) A valid guard registration card issued pursuant to this chapter.

1 (2) A valid firearm qualification card issued pursuant to this chapter.

2 (b) Paragraph (2) of subdivision (a) shall not apply to a duly appointed peace
3 officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
4 2 of the Penal Code, who meets all of the following:

5 (1) He or she has successfully completed a course of study in the use of
6 firearms.

7 (2) He or she is authorized to carry a concealed firearm in the course and scope
8 of his or her employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2
9 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6
10 of the Penal Code.

11 (3) He or she has proof that he or she has applied to the bureau for a firearms
12 qualification card.

13 (c)(1) This section shall not apply to a duly appointed peace officer, as defined
14 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
15 Code, who has written approval from his or her primary employer, as defined in
16 paragraph (2) of subdivision (i) of Section 7583.9, to carry a firearm while
17 working as a security guard or security officer.

18 (2) A peace officer exempt under this subdivision shall carry on his or her
19 person a letter of approval from his or her primary employer authorizing him or
20 her to carry a firearm while working as a security guard or security officer.

21 **Comment.** Subdivision (b) of Section 7583.12 is amended to reflect nonsubstantive
22 reorganization of the statutes governing control of deadly weapons.

23 **Bus. & Prof. Code § 7583.31 (amended). Firearms qualification card**

24 SEC. _____. Section 7583.31 of the Business and Professions Code is amended to
25 read:

26 7583.31. A firearms qualification card does not authorize the holder thereof to
27 carry a pistol, revolver, or other firearm capable of being concealed upon the
28 person in a concealed manner pursuant to Section ~~12050~~ 26150, 26155, 26170, or
29 26215 of the Penal Code.

30 **Comment.** Section 7583.31 is amended to reflect nonsubstantive reorganization of the statutes
31 governing control of deadly weapons.

32 **Bus. & Prof. Code § 7583.35 (amended). Required course for carrying tear gas or other**
33 **nonlethal chemical agent**

34 SEC. _____. Section 7583.35 of the Business and Professions Code is amended to
35 read:

36 7583.35. Every licensee, qualified manager, or a registered uniformed security
37 guard, who in the course of his or her employment carries tear gas or any other
38 nonlethal chemical agent, shall complete the required course pursuant to Section
39 ~~12403.5~~ 22835 of the Penal Code.

40 **Comment.** Section 7583.35 is amended to reflect nonsubstantive reorganization of the statutes
41 governing control of deadly weapons.

1 **Bus. & Prof. Code § 7583.37 (amended). Fines and prohibited acts**

2 SEC. _____. Section 7583.37 of the Business and Professions Code is amended to
3 read:

4 7583.37. The director may assess fines as enumerated in Article 7 (commencing
5 with Section 7587). Assessment of administrative fines shall be independent of
6 any other action by the bureau or any local, state, or federal governmental agency
7 that may result from a violation of this article. In addition to other prohibited acts
8 under this chapter, no licensee, qualified manager, or registered security guard
9 shall, during the course and scope of licensed activity, do any of the following:

10 (a) Carry any inoperable, replica, or other simulated firearm.

11 (b) Use a firearm in violation of the law, or in knowing violation of the
12 standards for the carrying and usage of firearms as taught in the course of training
13 in the carrying and use of firearms. Unlawful or prohibited uses of firearms shall
14 include, but not be limited to, the following:

15 (1) Illegally using, carrying, or possessing a dangerous weapon.

16 (2) Brandishing a weapon.

17 (3) Drawing a weapon without proper cause.

18 (4) Provoking a shooting incident without cause.

19 (5) Carrying or using a firearm while on duty while under the influence of
20 alcohol or dangerous drugs.

21 (6) Carrying or using a firearm of a caliber for which a firearms permit has not
22 been issued by the bureau.

23 (c) Carry or use a baton in the performance of his or her duties, unless he or she
24 has in his or her possession a valid baton certificate issued pursuant to Section
25 7585.14.

26 (d) Carry or use tear gas or any other nonlethal chemical agent in the
27 performance of his or her duties unless he or she has in his or her possession proof
28 of completion of a course in the carrying and use of tear gas or any other nonlethal
29 chemical agent.

30 (e) Carry a concealed pistol, revolver, or other firearm capable of being
31 concealed upon the person unless one of the following circumstances applies:

32 (1) The person has been issued a permit to carry a pistol, revolver, or other
33 firearm capable of being concealed upon the person in a concealed manner by a
34 local law enforcement agency pursuant to Section ~~12050~~ 26150, 26155, 26170, or
35 26215 of the Penal Code.

36 (2) The person is employed as a guard or messenger of a common carrier, bank,
37 or other financial institution and he or she carries the weapon while actually
38 employed in and about the shipment, transportation, or delivery of any money,
39 treasure, bullion, bonds, or other thing of value within this state, as specified in
40 ~~subdivision (e) of Section 12027~~ Section 25630 of the Penal Code.

41 (3) The person is an honorably retired peace officer authorized to carry a
42 concealed firearm pursuant to ~~subdivision (a) or (i) of Section 12027~~ Section

1 25650 of the Penal Code or Article 2 (commencing with Section 25450) of
2 Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

3 (4) The person is a duly appointed peace officer, as defined in Chapter 4.5
4 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is
5 authorized to carry a concealed firearm in the course and scope of his or her
6 employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2 (commencing
7 with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal
8 Code.

9 **Comment.** Subdivision (e) of Section 7583.37 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Bus. & Prof. Code § 7591.11 (amended). Firearms permit for licensee, qualified manager, or**
12 **alarm agent**

13 SEC. ____ . Section 7591.11 of the Business and Professions Code is amended to
14 read:

15 7591.11. The bureau shall deny a firearms permit, pursuant to ~~Section 12021~~
16 Article 1 (commencing with Section 29800) of Chapter 2 of Division 9 of Title 4
17 of Part 6 of the Penal Code, to any licensee, qualified manager, or alarm agent
18 who has been convicted of a felony, unless the felony conviction has been reduced
19 pursuant to Section 17 of the Penal Code or the person has been pardoned by the
20 Governor. The licensee, qualified manager, or alarm agent shall not have a right to
21 a review or a hearing if the denial is made pursuant to this section.

22 **Comment.** Section 7591.11 is amended to reflect nonsubstantive reorganization of the statutes
23 governing control of deadly weapons.

24 **Bus. & Prof. Code § 7596.6 (amended). Firearm qualification card**

25 SEC. ____ . Section 7596.6 of the Business and Professions Code is amended to
26 read:

27 7596.6. A firearms qualification card does not authorize the holder thereof to
28 carry a pistol, revolver, or other firearm capable of being concealed upon the
29 person in a concealed manner pursuant to ~~Section 12050~~ 26150, 26155, 26170, or
30 26215 of the Penal Code.

31 **Comment.** Section 7596.6 is amended to reflect nonsubstantive reorganization of the statutes
32 governing control of deadly weapons.

33 **Bus. & Prof. Code § 7596.12 (amended). Completion of course to carry tear gas or other**
34 **nonlethal chemical agent**

35 SEC. ____ . Section 7596.12 of the Business and Professions Code is amended to
36 read:

37 7596.12. Every person licensed, registered, or designated under this chapter,
38 who in the course of his or her employment carries tear gas, or any other nonlethal
39 chemical agent, shall complete the course required pursuant to ~~Section 12403.5~~
40 22835 of the Penal Code.

1 **Comment.** Section 7596.12 is amended to reflect nonsubstantive reorganization of the statutes
2 governing control of deadly weapons.

3 **Bus. & Prof. Code § 7597.1 (amended). Possession of firearms qualification card required**

4 SEC. _____. Section 7597.1 of the Business and Professions Code is amended to
5 read:

6 7597.1. (a) No licensee, qualified manager, branch office manager, or alarm
7 agent shall carry, use, or possess a loaded or unloaded firearm in the course and
8 scope of his or her employment, whether or not it is serviceable or operative,
9 unless he or she has in his or her possession a valid and current firearms
10 qualification card issued to him or her by the bureau. The card shall be shown to
11 any peace officer or bureau representative upon demand.

12 (b) Subdivision (a) shall not apply to a duly appointed peace officer, as defined
13 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
14 Code, who meets all of the following:

15 (1) He or she has successfully completed a course of study in the use of
16 firearms.

17 (2) He or she is authorized to carry a concealed firearm in the course and scope
18 of his or her employment pursuant to ~~subdivision (a) of Section 12027 Article 2~~
19 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6
20 of the Penal Code.

21 (3) He or she has proof that he or she has applied to the bureau for a firearms
22 qualification card.

23 (c) A fine of twenty-five dollars (\$25) may be assessed for the first violation of
24 this section and a fine of one hundred dollars (\$100) for each subsequent violation.

25 **Comment.** Subdivision (b) of Section 7597.1 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Bus. & Prof. Code § 7597.6 (amended). Carrying concealed pistol, revolver, or other**
28 **firearm**

29 SEC. _____. Section 7597.6 of the Business and Professions Code is amended to
30 read:

31 7597.6. (a) No licensee, qualified manager, branch office manager, or alarm
32 agent shall carry a pistol, revolver, or other firearm capable of being concealed
33 upon the person in a concealed manner unless one of the following circumstances
34 apply:

35 (1) The person has been issued a permit to carry that firearm in a concealed
36 manner by a local law enforcement agency pursuant to ~~Section 12050 26150,~~
37 26155, 26170, or 26215 of the Penal Code.

38 (2) The person is an honorably retired peace officer authorized to carry a
39 concealed firearm pursuant to ~~subdivision (a) or (i) of Section 12027 Section~~
40 25650 of the Penal Code or Article 2 (commencing with Section 25450) of
41 Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

1 (3) The person is a duly appointed peace officer, as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is
3 authorized to carry a concealed firearm in the course and scope of his or her
4 employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2 (commencing
5 with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal
6 Code.

7 (b) A fine of five hundred dollars (\$500) may be assessed for each violation of
8 subdivision (a).

9 **Comment.** Subdivision (a) of Section 7597.6 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Bus. & Prof. Code § 17533.9 (amended). Advertising for sale of tear gas, tear gas devices,**
12 **and tear gas weapons**

13 SEC. ____ . Section 17533.9 of the Business and Professions Code is amended to
14 read:

15 17533.9. It shall be unlawful for any person, firm, corporation, or association, in
16 any newspaper, magazine, circular, form letter, or open publication, published,
17 distributed, or circulated in this state, including over the Internet, or on any
18 billboard, card, label, or other advertising medium, or by means of any other
19 advertising device, to advertise the sale of tear gas, tear gas devices, and tear gas
20 weapons, as defined in Sections ~~12401 and 12402~~ 17240 and 17250 of the Penal
21 Code, unless there is conspicuously displayed or stated in connection with the
22 name and description of that tear gas, or those tear gas weapons or devices, a
23 direct and unequivocal statement that will clearly indicate that possession or
24 transportation of tear gas and tear gas weapons or devices is prohibited by law
25 unless specifically exempted or permitted pursuant to the authority contained in
26 ~~Chapter 4 (commencing with Section 12401) of Title 2 of Part 4~~ Division 11
27 (commencing with Section 22810) of Title 3 of Part 6 of the Penal Code.

28 **Comment.** Section 17533.9 is amended to reflect nonsubstantive reorganization of the statutes
29 governing control of deadly weapons.

30 **Bus. & Prof. Code § 21626 (amended). “Secondhand dealer” and “coin dealer”**

31 SEC. ____ . Section 21626 of the Business and Professions Code is amended to
32 read:

33 21626. (a) A “secondhand dealer,” as used in this article, means and includes
34 any person, copartnership, firm, or corporation whose business includes buying,
35 selling, trading, taking in pawn, accepting for sale on consignment, accepting for
36 auctioning, or auctioning secondhand tangible personal property. A “secondhand
37 dealer” does not include a “coin dealer” or participants at gun shows or events, as
38 defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its
39 successor, who are not required to be licensed pursuant to ~~Section 12071~~ Sections
40 26700 to 26915, inclusive, of the Penal Code, who are acting in compliance with
41 the requirements of ~~Section 12070 and subdivision (d) of Section 12072~~ Sections

1 26500 to 26585, inclusive, and 27545 of the Penal Code, and who are not a “Gun
2 Show Trader,” as described in ~~paragraph (5) of subdivision (b) of Section 12070~~
3 Sections 16620 and 26525 of the Penal Code.

4 (b) As used in this section, a “coin dealer” means any person, firm, partnership,
5 or corporation whose principal business is the buying, selling, and trading of
6 coins, monetized bullion, or commercial grade ingots of gold, or silver, or other
7 precious metals.

8 **Comment.** Subdivision (a) of Section 21626 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

10 **Bus. & Prof. Code § 21641 (amended). License to engage in business of secondhand dealer**

11 SEC. ____ . Section 21641 of the Business and Professions Code is amended to
12 read:

13 21641. (a) The chief of police, the sheriff or, where appropriate, the police
14 commission, shall accept an application for and grant a license permitting the
15 licensee to engage in the business of secondhand dealer, as defined in Section
16 21626, to an applicant who has not been convicted of an attempt to receive stolen
17 property or any other offense involving stolen property. Prior to the granting of a
18 license, the licensing authority shall submit the application to the Department of
19 Justice. If the Department of Justice does not comment on the application within
20 30 days thereafter, the licensing authority may grant the applicant a license. All
21 forms for application and licensure, and license renewal, shall be prescribed and
22 provided by the Department of Justice. A fee may be charged to the applicant as
23 specified by the Department of Justice and the local licensing authority for
24 processing the initial license application.

25 (b) For the purposes of this section, “convicted” means a plea or verdict of
26 guilty or a conviction following a plea of nolo contendere.

27 (c) Notwithstanding subdivisions (a) and (b), no person shall be denied a
28 secondhand dealer’s license solely on the grounds that he or she violated any
29 provision contained in Article 4 (commencing with Section 21625) or Article 5
30 (commencing with Section 21650) of this chapter, or any provision contained in
31 Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code,
32 unless the violation demonstrates a pattern of conduct.

33 (d) Any person licensed as a firearms dealer pursuant to ~~Section 12071~~ Sections
34 26700 to 26915, inclusive, of the Penal Code, who is conducting business at gun
35 shows or events pursuant to ~~subparagraph (B) of paragraph (1) of subdivision (b)~~
36 ~~of Section 12071~~ subdivision (b) of Section 26805 of the Penal Code, and who has
37 a valid secondhand dealer license granted by the appropriate local authorities in
38 the jurisdiction where the firearms dealer license has been granted, shall be
39 authorized to conduct business as a secondhand dealer at any gun show or event,
40 as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its
41 successor, without regard to the jurisdiction within this state that issued the
42 secondhand dealer license pursuant to subdivision (a) of this section. No additional

1 fees or separate secondhand dealer license shall be required by any agency having
2 jurisdiction over the locality where the gun show or event is conducted. However,
3 the person shall otherwise be subject to, and comply with, the requirements of this
4 article when he or she acts as a secondhand dealer at the gun show or event to the
5 same extent as if he or she were licensed as a secondhand dealer in the jurisdiction
6 in which the gun show or event is being conducted.

7 **Comment.** Subdivision (d) of Section 21641 is amended to reflect nonsubstantive
8 reorganization of the statutes governing control of deadly weapons.

CIVIL CODE

9 **Civ. Code § 3485 (amended). Abatement of nuisance on real property**

10 SEC. ____ . Section 3485 of the Civil Code is amended to read:

11 3485. (a) To abate the nuisance caused by illegal conduct involving an unlawful
12 weapons or ammunition purpose on real property, the city prosecutor or city
13 attorney may file, in the name of the people, an action for unlawful detainer
14 against any person who is in violation of the nuisance or illegal purpose provisions
15 of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to
16 that unlawful weapons or ammunition purpose. In filing this action, which shall be
17 based upon an arrest report or other report by a law enforcement agency, reporting
18 an offense committed on the property and documented by the observations of a
19 police officer, the city prosecutor or city attorney shall use the procedures set forth
20 in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of
21 Civil Procedure, except that in cases filed under this section, the following also
22 shall apply:

23 (1)(A) Prior to filing an action pursuant to this section, the city prosecutor or
24 city attorney shall give 30 calendar days' written notice to the owner, requiring the
25 owner to file an action for the removal of the person who is in violation of the
26 nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the
27 Code of Civil Procedure with respect to an unlawful weapons or ammunition
28 purpose.

29 (B) This notice shall include sufficient documentation establishing a violation of
30 the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the
31 Code of Civil Procedure and shall be served upon the owner and the tenant in
32 accordance with subdivision (e).

33 (C) The notice to the tenant shall also include on the bottom of its front page, in
34 at least 14-point bold type, the following:

35 "Notice to Tenant: This notice is not a notice of eviction. However, you should
36 know that an eviction action may soon be filed in court against you for an
37 unlawful weapons or ammunition activity, as described above. You should call
38 (insert name and telephone number of the city attorney or prosecutor pursuing the
39 action) or a legal assistance provider to stop the eviction action if any of the
40 following is applicable:

1 (i) You are not the person named in this notice.

2 (ii) The person named in the notice does not live with you.

3 (iii) The person named in the notice has permanently moved.

4 (iv) You do not know the person named in the notice.

5 (v) You have any other legal defense or legal reason to stop the eviction action.

6 A list of legal assistance providers is attached to this notice. Some provide free
7 legal help if you are eligible.”

8 (D) The owner shall, within 30 calendar days of the mailing of the written
9 notice, either provide the city prosecutor or city attorney with all relevant
10 information pertaining to the unlawful detainer case, or provide a written
11 explanation setting forth any safety-related reasons for noncompliance, and an
12 assignment to the city prosecutor or city attorney of the right to bring an unlawful
13 detainer action against the tenant.

14 (E) The assignment shall be on a form provided by the city prosecutor or city
15 attorney and may contain a provision for costs of investigation, discovery, and
16 reasonable attorney’s fees, in an amount not to exceed six hundred dollars (\$600).

17 (F) If the city prosecutor or city attorney accepts the assignment of the right of
18 the owner to bring the unlawful detainer action, the owner shall retain all other
19 rights and duties, including the handling of the tenant’s personal property,
20 following issuance of the writ of possession and its delivery to and execution by
21 the appropriate agency.

22 (2) Upon the failure of the owner to file an action pursuant to this section, or to
23 respond to the city prosecutor or city attorney as provided in paragraph (1), or
24 having filed an action, if the owner fails to prosecute it diligently and in good
25 faith, the city prosecutor or city attorney may file and prosecute the action, and
26 join the owner as a defendant in the action. This action shall have precedence over
27 any similar proceeding thereafter brought by the owner, or to one previously
28 brought by the owner and not prosecuted diligently and in good faith. Service of
29 the summons and complaint upon the defendant owner shall be in accordance with
30 Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil
31 Procedure.

32 (3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a
33 case filed pursuant to paragraph (2), the city prosecutor or city attorney may be
34 awarded costs, including the costs of investigation and discovery and reasonable
35 attorney’s fees. These costs shall be assessed against the defendant owner, to
36 whom notice was directed pursuant to paragraph (1), and once an abstract of
37 judgment is recorded, it shall constitute a lien on the subject real property.

38 (4) This article shall not prevent a local governing body from adopting and
39 enforcing laws, consistent with this article, relating to weapons or ammunition
40 abatement. If local laws duplicate or supplement this article, this article shall be
41 construed as providing alternative remedies and not preempting the field.

42 (5) This article shall not prevent a tenant from receiving relief against a
43 forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

1 (b) In any proceeding brought under this section, the court may, upon a showing
2 of good cause, issue a partial eviction ordering the removal of any person,
3 including, but not limited to, members of the tenant’s household if the court finds
4 that the person has engaged in the activities described in subdivision (a). Persons
5 removed pursuant to this section may be permanently barred from returning to or
6 reentering any portion of the entire premises. The court may further order as an
7 express condition of the tenancy that the remaining tenants shall not give
8 permission to or invite any person who has been removed pursuant to this
9 subdivision to return to or reenter any portion of the entire premises.

10 (c) For purposes of this section, “unlawful weapons or ammunition purpose”
11 means the illegal use, manufacture, causing to be manufactured, importation,
12 possession, possession for sale, sale, furnishing, or giving away of any of the
13 following:

14 (1) A firearm, as defined in subdivision ~~(b) of Section 12001~~ (a) of Section
15 16520 of the Penal Code.

16 (2) Any ammunition, as defined in ~~paragraph (2) of subdivision (b) of Section~~
17 ~~12316 or subdivisions (a) and (b) of Section 12323~~ subdivision (b) of Section
18 16150 of the Penal Code or in Section 16650 or 16660 of the Penal Code.

19 (3) Any assault weapon, as defined in Section ~~12276, 12276.1, or 12276.5~~
20 30510 or 30515 of the Penal Code.

21 (4) Any .50 BMG rifle, as defined in Section ~~12278~~ 30530 of the Penal Code.

22 (5) Any tear gas weapon, as defined in Section ~~12402~~ 17250 of the Penal Code.

23 (d) Notwithstanding subdivision (b) of Section 68097.2 of the Government
24 Code, a public entity may waive all or part of the costs incurred in furnishing the
25 testimony of a peace officer in an unlawful detainer action brought pursuant to this
26 section.

27 (e) The notice and documentation described in paragraph (1) of subdivision (a)
28 shall be given in writing and may be given either by personal delivery or by
29 deposit in the United States mail in a sealed envelope, postage prepaid, addressed
30 to the owner at the address known to the public entity giving the notice, or as
31 shown on the last equalized assessment roll, if not known. Separate notice of not
32 less than 30 calendar days and documentation shall be provided to the tenant in
33 accordance with this subdivision. Service by mail shall be deemed to be completed
34 at the time of deposit in the United States mail. Proof of giving the notice may be
35 made by a declaration signed under penalty of perjury by any employee of the
36 public entity which shows service in conformity with this section.

37 (f) This section shall apply only to the following courts:

38 (1) In the County of Los Angeles, any court having jurisdiction over unlawful
39 detainer cases involving real property situated in the City of Los Angeles or the
40 City of Long Beach.

41 (2) In the County of San Diego, any court having jurisdiction over unlawful
42 detainer cases involving real property situated in the City of San Diego.

1 (3) In the County of Alameda, any court with jurisdiction over unlawful detainer
2 cases involving real property situated in the City of Oakland.

3 (4) In the County of Sacramento, any court with jurisdiction over unlawful
4 detainer cases involving real property situated in the City of Sacramento.

5 (g)(1) The city attorney and city prosecutor of each participating jurisdiction
6 shall provide to the Judicial Council the following information:

7 (A) The number of notices provided pursuant to paragraph (1) of subdivision
8 (a).

9 (B) The number of cases filed by an owner, upon notice.

10 (C) The number of assignments executed by owners to the city attorney or city
11 prosecutor.

12 (D) The number of three-day, 30-day, or 60-day notices issued by the city
13 attorney or city prosecutor.

14 (E) The number of cases filed by the city attorney or city prosecutor.

15 (F) The number of times that an owner is joined as a defendant pursuant to this
16 section.

17 (G) As to each case filed by an owner, the city attorney, or the city prosecutor,
18 the following information:

19 (i) The number of judgments ordering an eviction or partial eviction, and
20 specifying whether each was a default judgment, stipulated judgment, or judgment
21 following trial.

22 (ii) The number of cases, listed by separate categories, in which the case was
23 withdrawn or in which the tenant prevailed.

24 (iii) The number of other dispositions, and specifying the disposition.

25 (iv) The number of defendants represented by counsel.

26 (v) Whether the case was a trial by the court or a trial by a jury.

27 (vi) Whether an appeal was taken, and, if so, the result of the appeal.

28 (vii) The number of cases in which partial eviction was requested, and the
29 number of cases in which the court ordered a partial eviction.

30 (H) As to each case in which a notice was issued, but no case was filed, the
31 following information:

32 (i) The number of instances in which a tenant voluntarily vacated.

33 (ii) The number of instances in which a tenant vacated a unit prior to the
34 providing of the notice.

35 (iii) The number of cases in which the notice provided pursuant to subdivision
36 (a) was erroneously sent to the tenant. This shall include a list of the reasons, if
37 known, for the erroneously sent notice, such as reliance on information on the
38 suspected violator's name or address that was incorrect, a clerical error, or any
39 other reason.

40 (iv) The number of other resolutions, and specifying the type of resolution.

41 (2)(A) Information compiled pursuant to this section shall be reported annually
42 to the Judicial Council on or before January 30 of each year.

1 (B) The Judicial Council shall thereafter submit a brief report to the Senate and
2 Assembly Committees on Judiciary on or before April 15, 2009, summarizing the
3 information collected pursuant to this section and evaluating the merits of the pilot
4 programs established by this section. The report for this section may be combined
5 with the Judicial Council report submitted for the pilot program established by
6 Section 11571.1 of the Health and Safety Code.

7 (h) This section shall remain in effect only until January 1, 2010, and as of that
8 date is repealed, unless a later enacted statute, ~~that~~ which is enacted before January
9 1, 2010, deletes or extends that date.

10 **Comment.** Subdivision (c) of Section 3485 is amended to reflect nonsubstantive
11 reorganization of the statutes governing control of deadly weapons.

12 Subdivision (h) is amended to make a technical revision.

13 **Note.** By its terms, Civil Code Section 3485 is scheduled to sunset on January 1, 2010. If that
14 occurs, the amendment shown above will not be necessary.

CODE OF CIVIL PROCEDURE

15 **Code Civ. Proc. § 527.6 (amended). Temporary restraining order and injunction** 16 **prohibiting harassment**

17 SEC. ____ . Section 527.6 of the Code of Civil Procedure is amended to read:

18 527.6. (a) A person who has suffered harassment as defined in subdivision (b)
19 may seek a temporary restraining order and an injunction prohibiting harassment
20 as provided in this section.

21 (b) For the purposes of this section, “harassment” is unlawful violence, a
22 credible threat of violence, or a knowing and willful course of conduct directed at
23 a specific person that seriously alarms, annoys, or harasses the person, and that
24 serves no legitimate purpose. The course of conduct must be such as would cause
25 a reasonable person to suffer substantial emotional distress, and must actually
26 cause substantial emotional distress to the plaintiff.

27 As used in this subdivision:

28 (1) “Unlawful violence” is any assault or battery, or stalking as prohibited in
29 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
30 or defense of others.

31 (2) “Credible threat of violence” is a knowing and willful statement or course of
32 conduct that would place a reasonable person in fear for his or her safety, or the
33 safety of his or her immediate family, and that serves no legitimate purpose.

34 (3) “Course of conduct” is a pattern of conduct composed of a series of acts over
35 a period of time, however short, evidencing a continuity of purpose, including
36 following or stalking an individual, making harassing telephone calls to an
37 individual, or sending harassing correspondence to an individual by any means,
38 including, but not limited to, the use of public or private mails, interoffice mail,
39 fax, or computer e-mail. Constitutionally protected activity is not included within
40 the meaning of “course of conduct.”

1 (c) Upon filing a petition for an injunction under this section, the plaintiff may
2 obtain a temporary restraining order in accordance with Section 527, except to the
3 extent this section provides a rule that is inconsistent. A temporary restraining
4 order may be issued with or without notice upon an affidavit that, to the
5 satisfaction of the court, shows reasonable proof of harassment of the plaintiff by
6 the defendant, and that great or irreparable harm would result to the plaintiff. In
7 the discretion of the court, and on a showing of good cause, a temporary
8 restraining order or injunction, issued under this section may include other named
9 family or household members who reside with the plaintiff. A temporary
10 restraining order issued under this section shall remain in effect, at the court's
11 discretion, for a period not to exceed 15 days, or, if the court extends the time for
12 hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or
13 terminated by the court.

14 (d) Within 15 days, or, if good cause appears to the court, 22 days from the date
15 the temporary restraining order is issued, a hearing shall be held on the petition for
16 the injunction. The defendant may file a response that explains, excuses, justifies,
17 or denies the alleged harassment or may file a cross-complaint under this section.
18 At the hearing, the judge shall receive any testimony that is relevant, and may
19 make an independent inquiry. If the judge finds by clear and convincing evidence
20 that unlawful harassment exists, an injunction shall issue prohibiting the
21 harassment. An injunction issued pursuant to this section shall have a duration of
22 not more than three years. At any time within the three months before the
23 expiration of the injunction, the plaintiff may apply for a renewal of the injunction
24 by filing a new petition for an injunction under this section.

25 (e) This section does not preclude either party from representation by private
26 counsel or from appearing on the party's own behalf.

27 (f) In a proceeding under this section if there are allegations or threats of
28 domestic violence, a support person may accompany a party in court and, if the
29 party is not represented by an attorney, may sit with the party at the table that is
30 generally reserved for the party and the party's attorney. The support person is
31 present to provide moral and emotional support for a person who alleges he or she
32 is a victim of domestic violence. The support person is not present as a legal
33 adviser and may not provide legal advice. The support person may assist the
34 person who alleges he or she is a victim of domestic violence in feeling more
35 confident that he or she will not be injured or threatened by the other party during
36 the proceedings if the person who alleges he or she is a victim of domestic
37 violence and the other party are required to be present in close proximity. This
38 subdivision does not preclude the court from exercising its discretion to remove
39 the support person from the courtroom if the court believes the support person is
40 prompting, swaying, or influencing the party assisted by the support person.

41 (g) Upon the filing of a petition for an injunction under this section, the
42 defendant shall be personally served with a copy of the petition, temporary
43 restraining order, if any, and notice of hearing of the petition. Service shall be

1 made at least five days before the hearing. The court may for good cause, on
2 motion of the plaintiff or on its own motion, shorten the time for service on the
3 defendant.

4 (h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a
5 copy of each temporary restraining order or injunction, or modification or
6 termination thereof, granted under this section, by the close of the business day on
7 which the order was granted, to the law enforcement agencies within the court's
8 discretion as are requested by the plaintiff. Each appropriate law enforcement
9 agency shall make available information as to the existence and current status of
10 these orders to law enforcement officers responding to the scene of reported
11 harassment.

12 An order issued under this section shall, on request of the plaintiff, be served on
13 the defendant, whether or not the defendant has been taken into custody, by any
14 law enforcement officer who is present at the scene of reported harassment
15 involving the parties to the proceeding. The plaintiff shall provide the officer with
16 an endorsed copy of the order and a proof of service that the officer shall complete
17 and send to the issuing court.

18 Upon receiving information at the scene of an incident of harassment that a
19 protective order has been issued under this section, or that a person who has been
20 taken into custody is the subject of an order, if the protected person cannot
21 produce a certified copy of the order, a law enforcement officer shall immediately
22 attempt to verify the existence of the order.

23 If the law enforcement officer determines that a protective order has been
24 issued, but not served, the officer shall immediately notify the defendant of the
25 terms of the order and shall at that time also enforce the order. Verbal notice of the
26 terms of the order shall constitute service of the order and is sufficient notice for
27 the purposes of this section and for the purposes of Section 273.6 and ~~subdivision~~
28 ~~(g) of Section 12021~~ Section 29825 of the Penal Code.

29 (i) The prevailing party in any action brought under this section may be awarded
30 court costs and attorney's fees, if any.

31 (j) Any willful disobedience of any temporary restraining order or injunction
32 granted under this section is punishable pursuant to Section 273.6 of the Penal
33 Code.

34 (k)(1) A person subject to a protective order issued under this section shall not
35 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
36 the protective order is in effect.

37 (2) The court shall order a person subject to a protective order issued under this
38 section to relinquish any firearms he or she owns or possesses pursuant to Section
39 527.9.

40 (3) Every person who owns, possesses, purchases or receives, or attempts to
41 purchase or receive a firearm while the protective order is in effect is punishable
42 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

1 (l) This section does not apply to any action or proceeding covered by Title 1.6C
2 (commencing with Section 1788) of the Civil Code or by Division 10
3 (commencing with Section 6200) of the Family Code. This section does not
4 preclude a plaintiff from using other existing civil remedies.

5 (m) The Judicial Council shall promulgate forms and instructions therefor, and
6 rules for service of process, scheduling of hearings, and any other matters required
7 by this section. The petition and response forms shall be simple and concise, and
8 their use by parties in actions brought pursuant to this section shall be mandatory.

9 (n) A temporary restraining order or injunction relating to harassment or
10 domestic violence issued by a court pursuant to this section shall be issued on
11 forms adopted by the Judicial Council of California and that have been approved
12 by the Department of Justice pursuant to subdivision (i) of Section 6380 of the
13 Family Code. However, the fact that an order issued by a court pursuant to this
14 section was not issued on forms adopted by the Judicial Council and approved by
15 the Department of Justice shall not, in and of itself, make the order unenforceable.

16 (o) Information on any temporary restraining order or injunction relating to
17 harassment or domestic violence issued by a court pursuant to this section shall be
18 transmitted to the Department of Justice in accordance with subdivision (b) of
19 Section 6380 of the Family Code.

20 (p) There is no filing fee for a petition that alleges that a person has inflicted or
21 threatened violence against the petitioner, or stalked the petitioner, or acted or
22 spoken in any other manner that has placed the petitioner in reasonable fear of
23 violence, and that seeks a protective or restraining order or injunction restraining
24 stalking or future violence or threats of violence, in any action brought pursuant to
25 this section. No fee shall be paid for a subpoena filed in connection with a petition
26 alleging these acts. No fee shall be paid for filing a response to a petition alleging
27 these acts.

28 (q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
29 Government Code, there shall be no fee for the service of process of a protective
30 order, restraining order, or injunction to be issued, if any of the following
31 conditions apply:

32 (A) The protective order, restraining order, or injunction issued pursuant to this
33 section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

34 (B) The protective order, restraining order, or injunction issued pursuant to this
35 section is based upon a credible threat of violence.

36 (C) The protective order, restraining order, or injunction is issued pursuant to
37 Section 6222 of the Family Code.

38 (2) The Judicial Council shall prepare and develop application forms for
39 applicants who wish to avail themselves of the services described in this
40 subdivision.

41 **Comment.** Subdivisions (h) and (k) of Section 527.6 are amended to reflect nonsubstantive
42 reorganization of the statutes governing control of deadly weapons.

1 **Code Civ. Proc. § 527.8 (amended). Temporary restraining order and injunction on behalf**
2 **of employee**

3 SEC. ____ . Section 527.8 of the Code of Civil Procedure is amended to read:

4 527.8. (a) Any employer, whose employee has suffered unlawful violence or a
5 credible threat of violence from any individual, that can reasonably be construed
6 to be carried out or to have been carried out at the workplace, may seek a
7 temporary restraining order and an injunction on behalf of the employee and, at
8 the discretion of the court, any number of other employees at the workplace, and,
9 if appropriate, other employees at other workplaces of the employer.

10 (b) For the purposes of this section:

11 (1) “Unlawful violence” is any assault or battery, or stalking as prohibited in
12 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
13 or defense of others.

14 (2) “Credible threat of violence” is a knowing and willful statement or course of
15 conduct that would place a reasonable person in fear for his or her safety, or the
16 safety of his or her immediate family, and that serves no legitimate purpose.

17 (3) “Course of conduct” is a pattern of conduct composed of a series of acts over
18 a period of time, however short, evidencing a continuity of purpose, including
19 following or stalking an employee to or from the place of work; entering the
20 workplace; following an employee during hours of employment; making
21 telephone calls to an employee; or sending correspondence to an employee by any
22 means, including, but not limited to, the use of the public or private mails,
23 interoffice mail, fax, or computer e-mail.

24 (c) This section does not permit a court to issue a temporary restraining order or
25 injunction prohibiting speech or other activities that are constitutionally protected,
26 or otherwise protected by Section 527.3 or any other provision of law.

27 (d) For purposes of this section, the terms “employer” and “employee” mean
28 persons defined in Section 350 of the Labor Code. “Employer” also includes a
29 federal agency, the state, a state agency, a city, county, or district, and a private,
30 public, or quasi-public corporation, or any public agency thereof or therein.
31 “Employee” also includes the members of boards of directors of private, public,
32 and quasi-public corporations and elected and appointed public officers. For
33 purposes of this section only, “employee” also includes a volunteer or independent
34 contractor who performs services for the employer at the employer’s worksite.

35 (e) Upon filing a petition for an injunction under this section, the plaintiff may
36 obtain a temporary restraining order in accordance with subdivision (a) of Section
37 527, if the plaintiff also files an affidavit that, to the satisfaction of the court,
38 shows reasonable proof that an employee has suffered unlawful violence or a
39 credible threat of violence by the defendant, and that great or irreparable harm
40 would result to an employee. In the discretion of the court, and on a showing of
41 good cause, a temporary restraining order or injunction issued under this section
42 may include other named family or household members who reside with the
43 employee, or other persons employed at his or her workplace or workplaces.

1 A temporary restraining order granted under this section shall remain in effect,
2 at the court's discretion, for a period not to exceed 15 days, unless otherwise
3 modified or terminated by the court.

4 (f) Within 15 days of the filing of the petition, a hearing shall be held on the
5 petition for the injunction. The defendant may file a response that explains,
6 excuses, justifies, or denies the alleged unlawful violence or credible threats of
7 violence or may file a cross-complaint under this section. At the hearing, the judge
8 shall receive any testimony that is relevant and may make an independent inquiry.
9 Moreover, if the defendant is a current employee of the entity requesting the
10 injunction, the judge shall receive evidence concerning the employer's decision to
11 retain, terminate, or otherwise discipline the defendant. If the judge finds by clear
12 and convincing evidence that the defendant engaged in unlawful violence or made
13 a credible threat of violence, an injunction shall issue prohibiting further unlawful
14 violence or threats of violence. An injunction issued pursuant to this section shall
15 have a duration of not more than three years. At any time within the three months
16 before the expiration of the injunction, the plaintiff may apply for a renewal of the
17 injunction by filing a new petition for an injunction under this section.

18 (g) This section does not preclude either party from representation by private
19 counsel or from appearing on his or her own behalf.

20 (h) Upon filing of a petition for an injunction under this section, the defendant
21 shall be personally served with a copy of the petition, temporary restraining order,
22 if any, and notice of hearing of the petition. Service shall be made at least five
23 days before the hearing. The court may, for good cause, on motion of the plaintiff
24 or on its own motion, shorten the time for service on the defendant.

25 (i)(1) The court shall order the plaintiff or the attorney for the plaintiff to deliver
26 a copy of each temporary restraining order or injunction, or modification or
27 termination thereof, granted under this section, by the close of the business day on
28 which the order was granted, to the law enforcement agencies within the court's
29 discretion as are requested by the plaintiff. Each appropriate law enforcement
30 agency shall make available information as to the existence and current status of
31 these orders to law enforcement officers responding to the scene of reported
32 unlawful violence or a credible threat of violence.

33 (2) At the request of the plaintiff, an order issued under this section shall be
34 served on the defendant, regardless of whether the defendant has been taken into
35 custody, by any law enforcement officer who is present at the scene of reported
36 unlawful violence or a credible threat of violence involving the parties to the
37 proceedings. The plaintiff shall provide the officer with an endorsed copy of the
38 order and proof of service that the officer shall complete and send to the issuing
39 court.

40 (3) Upon receiving information at the scene of an incident of unlawful violence
41 or a credible threat of violence that a protective order has been issued under this
42 section, or that a person who has been taken into custody is the subject of an order,
43 if the plaintiff or the protected person cannot produce an endorsed copy of the

1 order, a law enforcement officer shall immediately attempt to verify the existence
2 of the order.

3 (4) If the law enforcement officer determines that a protective order has been
4 issued, but not served, the officer shall immediately notify the defendant of the
5 terms of the order and obtain the defendant's address. The law enforcement officer
6 shall at that time also enforce the order, but may not arrest or take the defendant
7 into custody for acts in violation of the order that were committed prior to the
8 verbal notice of the terms and conditions of the order. The law enforcement
9 officer's verbal notice of the terms of the order shall constitute service of the order
10 and constitutes sufficient notice for the purposes of this section and for the
11 purposes of Section 273.6 and ~~subdivision (g) of Section 12021~~ Section 29825
12 of the Penal Code. The plaintiff shall mail an endorsed copy of the order to the
13 defendant's mailing address provided to the law enforcement officer within one
14 business day of the reported incident of unlawful violence or a credible threat of
15 violence at which a verbal notice of the terms of the order was provided by a law
16 enforcement officer.

17 (j)(1) A person subject to a protective order issued under this section shall not
18 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
19 the protective order is in effect.

20 (2) The court shall order a person subject to a protective order issued under this
21 section to relinquish any firearms he or she owns or possesses pursuant to Section
22 527.9.

23 (3) Every person who owns, possesses, purchases or receives, or attempts to
24 purchase or receive a firearm while the protective order is in effect is punishable
25 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

26 (k) Any intentional disobedience of any temporary restraining order or
27 injunction granted under this section is punishable pursuant to Section 273.6 of the
28 Penal Code.

29 (l) Nothing in this section may be construed as expanding, diminishing, altering,
30 or modifying the duty, if any, of an employer to provide a safe workplace for
31 employees and other persons.

32 (m) The Judicial Council shall develop forms, instructions, and rules for
33 scheduling of hearings and other procedures established pursuant to this section.
34 The forms for the petition and response shall be simple and concise, and their use
35 by parties in actions brought pursuant to this section shall be mandatory.

36 (n) A temporary restraining order or injunction relating to harassment or
37 domestic violence issued by a court pursuant to this section shall be issued on
38 forms adopted by the Judicial Council of California and that have been approved
39 by the Department of Justice pursuant to subdivision (i) of Section 6380 of the
40 Family Code. However, the fact that an order issued by a court pursuant to this
41 section was not issued on forms adopted by the Judicial Council and approved by
42 the Department of Justice shall not, in and of itself, make the order unenforceable.

1 (o) Information on any temporary restraining order or injunction relating to
2 harassment or domestic violence issued by a court pursuant to this section shall be
3 transmitted to the Department of Justice in accordance with subdivision (b) of
4 Section 6380 of the Family Code.

5 (p) There is no filing fee for a petition that alleges that a person has inflicted or
6 threatened violence against an employee of the petitioner, or stalked the employee,
7 or acted or spoken in any other manner that has placed the employee in reasonable
8 fear of violence, and that seeks a protective or restraining order or injunction
9 restraining stalking or future violence or threats of violence, in any action brought
10 pursuant to this section. No fee shall be paid for a subpoena filed in connection
11 with a petition alleging these acts. No fee shall be paid for filing a response to a
12 petition alleging these acts.

13 (q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
14 Government Code, there shall be no fee for the service of process of a temporary
15 restraining order or injunction to be issued pursuant to this section if either of the
16 following conditions apply:

17 (A) The temporary restraining order or injunction issued pursuant to this section
18 is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

19 (B) The temporary restraining order or injunction issued pursuant to this section
20 is based upon a credible threat of violence.

21 (2) The Judicial Council shall prepare and develop application forms for
22 applicants who wish to avail themselves of the services described in this
23 subdivision.

24 **Comment.** Subdivisions (i) and (j) of Section 527.8 are amended to reflect nonsubstantive
25 reorganization of the statutes governing control of deadly weapons.

26 **Code Civ. Proc. § 527.9 (amended). Relinquishment of firearms by order or injunction**

27 SEC. ____ . Section 527.9 of the Code of Civil Procedure is amended to read:

28 527.9. (a) A person subject to a temporary restraining order or injunction issued
29 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a
30 restraining order issued pursuant to Section 136.2 of the Penal Code, or Section
31 15657.03 of the Welfare and Institutions Code, shall relinquish the firearm
32 pursuant to this section.

33 (b) Upon the issuance of a protective order pursuant to subdivision (a), the court
34 shall order the person to relinquish any firearm in that person's immediate
35 possession or control, or subject to that person's immediate possession or control,
36 within 24 hours of being served with the order, either by surrendering the firearm
37 to the control of local law enforcement officials, or by selling the firearm to a
38 licensed gun dealer, as specified in ~~Section 12071~~ Sections 26700 to 26915,
39 inclusive, of the Penal Code. A person ordered to relinquish any firearm pursuant
40 to this subdivision shall file with the court a receipt showing the firearm was
41 surrendered to the local law enforcement agency or sold to a licensed gun dealer
42 within 48 hours after receiving the order.

1 In the event that it is necessary to continue the date of any hearing due to a
2 request for a relinquishment order pursuant to this section, the court shall ensure
3 that all applicable protective orders described in Section 6218 of the Family Code
4 remain in effect or bifurcate the issues and grant the permanent restraining order
5 pending the date of the hearing.

6 (c) A local law enforcement agency may charge the person subject to the order
7 or injunction a fee for the storage of any firearm relinquished pursuant to this
8 section. The fee shall not exceed the actual cost incurred by the local law
9 enforcement agency for the storage of the firearm. For purposes of this
10 subdivision, “actual cost” means expenses directly related to taking possession of
11 a firearm, storing the firearm, and surrendering possession of the firearm to a
12 licensed dealer as defined in Section ~~12071~~ 26700 of the Penal Code or to the
13 person relinquishing the firearm.

14 (d) The restraining order requiring a person to relinquish a firearm pursuant to
15 subdivision (b) shall state on its face that the respondent is prohibited from
16 owning, possessing, purchasing, or receiving a firearm while the protective order
17 is in effect and that the firearm shall be relinquished to the local law enforcement
18 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
19 surrender or sale shall be filed with the court within a specified period of receipt of
20 the order. The order shall also state on its face the expiration date for
21 relinquishment. Nothing in this section shall limit a respondent’s right under
22 existing law to petition the court at a later date for modification of the order.

23 (e) The restraining order requiring a person to relinquish a firearm pursuant to
24 subdivision (b) shall prohibit the person from possessing or controlling any
25 firearm for the duration of the order. At the expiration of the order, the local law
26 enforcement agency shall return possession of any surrendered firearm to the
27 respondent, within five days after the expiration of the relinquishment order,
28 unless the local law enforcement agency determines that (1) the firearm has been
29 stolen, (2) the respondent is prohibited from possessing a firearm because the
30 respondent is in any prohibited class for the possession of firearms, as defined in
31 Sections ~~12021 and 12021.1~~ Chapter 2 (commencing with Section 29800) and
32 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
33 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,
34 or (3) another successive restraining order is used against the respondent under
35 this section. If the local law enforcement agency determines that the respondent is
36 the legal owner of any firearm deposited with the local law enforcement agency
37 and is prohibited from possessing any firearm, the respondent shall be entitled to
38 sell or transfer the firearm to a licensed dealer as defined in Section ~~12071~~ 26700
39 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to
40 the lawful owner upon his or her identification of the firearm and proof of
41 ownership.

42 (f) The court may, as part of the relinquishment order, grant an exemption from
43 the relinquishment requirements of this section for a particular firearm if the

1 respondent can show that a particular firearm is necessary as a condition of
2 continued employment and that the current employer is unable to reassign the
3 respondent to another position where a firearm is unnecessary. If an exemption is
4 granted pursuant to this subdivision, the order shall provide that the firearm shall
5 be in the physical possession of the respondent only during scheduled work hours
6 and during travel to and from his or her place of employment. In any case
7 involving a peace officer who as a condition of employment and whose personal
8 safety depends on the ability to carry a firearm, a court may allow the peace
9 officer to continue to carry a firearm, either on duty or off duty, if the court finds
10 by a preponderance of the evidence that the officer does not pose a threat of harm.
11 Prior to making this finding, the court shall require a mandatory psychological
12 evaluation of the peace officer and may require the peace officer to enter into
13 counseling or other remedial treatment program to deal with any propensity for
14 domestic violence.

15 (g) During the period of the relinquishment order, a respondent is entitled to
16 make one sale of all firearms that are in the possession of a local law enforcement
17 agency pursuant to this section. A licensed gun dealer, who presents a local law
18 enforcement agency with a bill of sale indicating that all firearms owned by the
19 respondent that are in the possession of the local law enforcement agency have
20 been sold by the respondent to the licensed gun dealer, shall be given possession
21 of those firearms, at the location where a respondent's firearms are stored, within
22 five days of presenting the local law enforcement agency with a bill of sale.

23 **Comment.** Section 527.9 is amended to reflect nonsubstantive reorganization of the statutes
24 governing control of deadly weapons.

EDUCATION CODE

25 **Educ. Code § 49330 (amended). Injurious objects defined**

26 SEC. ____ . Section 49330 of the Education Code is amended to read:

27 49330. (a) As used in this article "injurious object" shall mean those objects
28 specified in ~~Sections 653k, 12001, 12020, 12220, 12401, and 12402 of the Penal~~
29 ~~Code, and the following sections:~~

30 (1) Subdivision (b) of Section 16170 of the Penal Code.

31 (2) Section 16250 of the Penal Code.

32 (3) Subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code.

33 (4) Section 16530 of the Penal Code.

34 (5) Section 16590 of the Penal Code.

35 (6) Section 16640 of the Penal Code.

36 (7) Subdivision (a) of Section 16840 of the Penal Code.

37 (8) Section 17235 of the Penal Code.

38 (9) Section 17240 of the Penal Code.

39 (10) Section 17250 of the Penal Code.

40 (11) Section 32625 of the Penal Code.

1 (b) As used in this article, “injurious object” shall also mean objects capable of
2 inflicting substantial bodily damage, not necessary for the academic purpose of the
3 pupil.

4 (c) As used in this section, “academic purpose” means any school sponsored
5 activity or class of instruction scheduled during the schoolday.

6 (d) “Injurious object” does not include any personal possessions or items of
7 apparel which a schoolage child reasonably may be expected either to have in his
8 or her possession or to wear.

9 **Comment.** Section 49330 is amended to reflect nonsubstantive reorganization of the statutes
10 governing control of deadly weapons. The section is also amended to make technical revisions.

FAMILY CODE

11 **Fam. Code § 6383 (amended). Temporary restraining order or emergency protective order** 12 **issued at scene of domestic violence**

13 SEC. ____ . Section 6383 of the Family Code is amended to read:

14 6383. (a) A temporary restraining order or emergency protective order issued
15 under this part shall, on request of the petitioner, be served on the respondent,
16 whether or not the respondent has been taken into custody, by any law
17 enforcement officer who is present at the scene of reported domestic violence
18 involving the parties to the proceeding.

19 (b) The petitioner shall provide the officer with an endorsed copy of the order
20 and a proof of service that the officer shall complete and transmit to the issuing
21 court.

22 (c) It is a rebuttable presumption that the proof of service was signed on the date
23 of service.

24 (d) Upon receiving information at the scene of a domestic violence incident that
25 a protective order has been issued under this part, or that a person who has been
26 taken into custody is the respondent to that order, if the protected person cannot
27 produce an endorsed copy of the order, a law enforcement officer shall
28 immediately inquire of the Department of Justice Domestic Violence Restraining
29 Order System to verify the existence of the order.

30 (e) If the law enforcement officer determines that a protective order has been
31 issued, but not served, the officer shall immediately notify the respondent of the
32 terms of the order and where a written copy of the order can be obtained and the
33 officer shall, at that time, also enforce the order. The law enforcement officer’s
34 verbal notice of the terms of the order shall constitute service of the order and is
35 sufficient notice for the purposes of this section and for the purposes of Section
36 273.6 and ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

37 (f) If a report is required under Section 13730 of the Penal Code, or if no report
38 is required, then in the daily incident log, the officer shall provide the name and
39 assignment of the officer notifying the respondent pursuant to subdivision (e) and
40 the case number of the order.

1 (g) Upon service of the order outside of the court, a law enforcement officer
2 shall advise the respondent to go to the local court to obtain a copy of the order
3 containing the full terms and conditions of the order.

4 (h) There shall be no civil liability on the part of, and no cause of action for,
5 false arrest or false imprisonment against any peace officer who makes an arrest
6 pursuant to a protective or restraining order that is regular upon its face, if the
7 peace officer in making the arrest acts in good faith and has reasonable cause to
8 believe that the person against whom the order is issued has notice of the order
9 and has committed an act in violation of the order. If there is more than one civil
10 order regarding the same parties, the peace officer shall enforce the order that was
11 issued last. If there are both civil and criminal orders regarding the same parties,
12 the peace officer shall enforce the criminal order issued last, subject to the
13 provisions of subdivisions (h) and (i) of Section 136.2 of the Penal Code. Nothing
14 in this section shall be deemed to exonerate a peace officer from liability for the
15 unreasonable use of force in the enforcement of the order. The immunities
16 afforded by this section shall not affect the availability of any other immunity
17 which may apply, including, but not limited to, Sections 820.2 and 820.4 of the
18 Government Code.

19 **Comment.** Subdivision (e) of Section 6383 is amended to reflect nonsubstantive
20 reorganization of the statutes governing control of deadly weapons.

21 **Fam. Code § 6385 (amended). Protective order**

22 SEC. ____ . Section 6385 of the Family Code is amended to read:

23 6385. (a) Proof of service of the protective order is not required for the purposes
24 of Section 6380 if the order indicates on its face that both parties were personally
25 present at the hearing at which the order was issued and that, for the purpose of
26 Section 6384, no proof of service is required, or if the order was served by a law
27 enforcement officer pursuant to Section 6383.

28 (b) The failure of the petitioner to provide the Department of Justice with the
29 personal descriptive information regarding the person restrained does not
30 invalidate the protective order.

31 (c) There is no civil liability on the part of, and no cause of action arises against,
32 an employee of a local law enforcement agency, a court, or the Department of
33 Justice, acting within the scope of employment, if a person described in
34 ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code unlawfully
35 purchases or receives or attempts to purchase or receive a firearm and a person is
36 injured by that firearm or a person who is otherwise entitled to receive a firearm is
37 denied a firearm and either wrongful action is due to a failure of a court to provide
38 the notification provided for in this chapter.

39 **Comment.** Subdivision (c) of Section 6385 is amended to reflect nonsubstantive
40 reorganization of the statutes governing control of deadly weapons.

1 **Fam. Code § 6389 (amended). Effect of protective order on ownership, possession,**
2 **purchase, and receipt of firearm**

3 SEC. ____ . Section 6389 of the Family Code is amended to read:

4 6389. (a) A person subject to a protective order, as defined in Section 6218,
5 shall not own, possess, purchase, or receive a firearm while that protective order is
6 in effect. Every person who owns, possesses, purchases or receives, or attempts to
7 purchase or receive a firearm while the protective order is in effect is punishable
8 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

9 (b) On all forms providing notice that a protective order has been requested or
10 granted, the Judicial Council shall include a notice that, upon service of the order,
11 the respondent shall be ordered to relinquish possession or control of any firearms
12 and not to purchase or receive or attempt to purchase or receive any firearms for a
13 period not to exceed the duration of the restraining order.

14 (c)(1) Upon issuance of a protective order, as defined in Section 6218, the court
15 shall order the respondent to relinquish any firearm in the respondent's immediate
16 possession or control or subject to the respondent's immediate possession or
17 control.

18 (2) The relinquishment ordered pursuant to paragraph (1) shall occur by
19 immediately surrendering the firearm in a safe manner, upon request of any law
20 enforcement officer, to the control of the officer, after being served with the
21 protective order. Alternatively, if no request is made by a law enforcement officer,
22 the relinquishment shall occur within 24 hours of being served with the order, by
23 either surrendering the firearm in a safe manner to the control of local law
24 enforcement officials, or by selling the firearm to a licensed gun dealer, as
25 specified in ~~Section 12071~~ Sections 26700 to 26915, inclusive, of the Penal Code.
26 The law enforcement officer or licensed gun dealer taking possession of the
27 firearm pursuant to this subdivision shall issue a receipt to the person relinquishing
28 the firearm at the time of relinquishment. A person ordered to relinquish any
29 firearm pursuant to this subdivision shall file with the court that issued the
30 protective order, within 48 hours after being served with the order, the receipt
31 showing the firearm was surrendered to a local law enforcement agency or sold to
32 a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of
33 the protective order.

34 (3) The application forms for protective orders adopted by the Judicial Council
35 and approved by the Department of Justice shall be amended to require the
36 petitioner to describe the number, types, and locations of any firearms presently
37 known by the petitioner to be possessed or controlled by the respondent.

38 (4) It is recommended that every law enforcement agency in the state develop,
39 adopt, and implement written policies and standards for law enforcement officers
40 who request immediate relinquishment of firearms.

41 (d) If the respondent declines to relinquish possession of any firearm based on
42 the assertion of the right against self-incrimination, as provided by the Fifth
43 Amendment to the United States Constitution and Section 15 of Article I of the

1 California Constitution, the court may grant use immunity for the act of
2 relinquishing the firearm required under this section.

3 (e) A local law enforcement agency may charge the respondent a fee for the
4 storage of any firearm pursuant to this section. This fee shall not exceed the actual
5 cost incurred by the local law enforcement agency for the storage of the firearm.
6 For purposes of this subdivision, “actual cost” means expenses directly related to
7 taking possession of a firearm, storing the firearm, and surrendering possession of
8 the firearm to a licensed dealer as defined in Section ~~12071~~ 26700 of the Penal
9 Code or to the respondent.

10 (f) The restraining order requiring a person to relinquish a firearm pursuant to
11 subdivision (c) shall state on its face that the respondent is prohibited from
12 owning, possessing, purchasing, or receiving a firearm while the protective order
13 is in effect and that the firearm shall be relinquished to the local law enforcement
14 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
15 surrender or sale shall be filed with the court within a specified period of receipt of
16 the order. The order shall also state on its face the expiration date for
17 relinquishment. Nothing in this section shall limit a respondent’s right under
18 existing law to petition the court at a later date for modification of the order.

19 (g) The restraining order requiring a person to relinquish a firearm pursuant to
20 subdivision (c) shall prohibit the person from possessing or controlling any
21 firearm for the duration of the order. At the expiration of the order, the local law
22 enforcement agency shall return possession of any surrendered firearm to the
23 respondent, within five days after the expiration of the relinquishment order,
24 unless the local law enforcement agency determines that (1) the firearm has been
25 stolen, (2) the respondent is prohibited from possessing a firearm because the
26 respondent is in any prohibited class for the possession of firearms, as defined in
27 Sections ~~12021 and 12021.1~~ Chapter 2 (commencing with Section 29800) and
28 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
29 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,
30 or (3) another successive restraining order is used against the respondent under
31 this section. If the local law enforcement agency determines that the respondent is
32 the legal owner of any firearm deposited with the local law enforcement agency
33 and is prohibited from possessing any firearm, the respondent shall be entitled to
34 sell or transfer the firearm to a licensed dealer as defined in Section ~~12071~~ 26700
35 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to
36 the lawful owner upon his or her identification of the firearm and proof of
37 ownership.

38 (h) The court may, as part of the relinquishment order, grant an exemption from
39 the relinquishment requirements of this section for a particular firearm if the
40 respondent can show that a particular firearm is necessary as a condition of
41 continued employment and that the current employer is unable to reassign the
42 respondent to another position where a firearm is unnecessary. If an exemption is
43 granted pursuant to this subdivision, the order shall provide that the firearm shall

1 be in the physical possession of the respondent only during scheduled work hours
2 and during travel to and from his or her place of employment. In any case
3 involving a peace officer who as a condition of employment and whose personal
4 safety depends on the ability to carry a firearm, a court may allow the peace
5 officer to continue to carry a firearm, either on duty or off duty, if the court finds
6 by a preponderance of the evidence that the officer does not pose a threat of harm.
7 Prior to making this finding, the court shall require a mandatory psychological
8 evaluation of the peace officer and may require the peace officer to enter into
9 counseling or other remedial treatment program to deal with any propensity for
10 domestic violence.

11 (i) During the period of the relinquishment order, a respondent is entitled to
12 make one sale of all firearms that are in the possession of a local law enforcement
13 agency pursuant to this section. A licensed gun dealer, who presents a local law
14 enforcement agency with a bill of sale indicating that all firearms owned by the
15 respondent that are in the possession of the local law enforcement agency have
16 been sold by the respondent to the licensed gun dealer, shall be given possession
17 of those firearms, at the location where a respondent's firearms are stored, within
18 five days of presenting the local law enforcement agency with a bill of sale.

19 (j) The disposition of any unclaimed property under this section shall be made
20 pursuant to Section 1413 of the Penal Code.

21 (k) The return of a firearm to any person pursuant to subdivision (g) shall not be
22 subject to the requirements of ~~subdivision (d) of Section 12072~~ Section 27545 of
23 the Penal Code.

24 (l) If the respondent notifies the court that he or she owns a firearm that is not in
25 his or her immediate possession, the court may limit the order to exclude that
26 firearm if the judge is satisfied the respondent is unable to gain access to that
27 firearm while the protective order is in effect.

28 (m) Any respondent to a protective order who violates any order issued pursuant
29 to this section shall be punished under the provisions of ~~subdivision (g) of Section~~
30 12021 Section 29825 of the Penal Code.

31 **Comment.** Section 6389 is amended to reflect nonsubstantive reorganization of the statutes
32 governing control of deadly weapons.

FISH & GAME CODE

33 **Fish & Game Code § 211 (amended). Restrictions on material printed pursuant to Section** 34 **210(d)**

35 SEC. ____ . Section 211 of the Fish and Game Code is amended to read:

36 211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains
37 advertisements shall meet all specifications prescribed by the department. The
38 printed material shall not contain advertisements for tobacco products, alcohol,
39 firearms and devices prohibited pursuant to ~~Sections 12020, 12220, and 12280~~
40 Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of

1 Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision
2 listed in Section 16590 of the Penal Code, or firearms not authorized by the
3 commission as a legal method of sport-hunting, political statements, solicitations
4 for membership in organizations, or any other statement, solicitation, or product
5 advertisement that is in conflict with the purposes for which the material is
6 produced, as determined by the commission. The printing contract shall include
7 criteria to ensure that the public information provided in the publication is easy to
8 reference, read, and understand.

9 (b) Neither the department nor the commission shall contract with private
10 entities to print the materials described in subdivision (d) of Section 210 if the
11 letting of those contracts will result in the elimination of civil service positions.

12 **Comment.** Section 211 is amended to reflect nonsubstantive reorganization of the statutes
13 governing control of deadly weapons.

14 **Fish & Game Code § 3001 (amended). Unlawful take of birds or mammals**

15 SEC. ____ . Section 3001 of the Fish and Game Code is amended to read:

16 3001. It is unlawful to take birds or mammals with firearms, BB devices as
17 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
18 crossbows, or with bow and arrow when intoxicated.

19 **Comment.** Section 3001 is amended to reflect nonsubstantive reorganization of the statutes
20 governing control of deadly weapons.

21 **Fish & Game Code § 3801.6 (amended). Nongame birds**

22 SEC. ____ . Section 3801.6 of the Fish and Game Code is amended to read:

23 3801.6. (a) Except as otherwise provided in this code or regulations made
24 pursuant thereto, it is unlawful to possess the carcass, skin, or parts of any
25 nongame bird. The feathers, carcass, skin, or parts of any nongame bird possessed
26 by any person in violation of any of the provisions of this code shall be seized by
27 the department and delivered to a California Native American tribal government
28 or a scientific or educational institution, used by the department, or destroyed.

29 (b)(1) It shall be an affirmative defense to a violation of this section if the
30 possessor of feathers, carcass, skin, or parts of a nongame bird legally acquired the
31 feathers, carcass, skin, or parts, possesses them for tribal, cultural, or spiritual
32 purposes, and satisfies either of the following criteria:

33 (A) The possessor is an enrolled member of a federally recognized Native
34 American tribe or nonfederally recognized California Native American tribe listed
35 on the California Tribal Consultation List maintained by the Native American
36 Heritage Commission who has, in his or her immediate possession, valid tribal
37 identification or other irrefutable proof of current enrollment.

38 (B) The possessor has a certificate of degree of Indian blood issued by the
39 United States Bureau of Indian Affairs in his or her immediate possession.

40 (2) Nothing in this section allows any person to sell nongame bird feathers,
41 carcasses, skins, or parts. Native Americans meeting the affirmative defense

1 requirements may salvage dead nongame birds so long as the person salvaging
2 these birds does not possess, nor is in the company of any person who possesses, a
3 firearm, BB device as defined in ~~subdivision (g) of Section 12001~~ Section 16250
4 of the Penal Code, trap, snare, net archery equipment, device capable of
5 discharging a projectile, or any apparatus designed to take birds. Salvaging shall
6 not take place by any person involved in the take of the nongame bird to be
7 salvaged, any person present at the time of the take, or by any person who
8 received related information originating from any person present at the time of the
9 take of the nongame bird. Salvaging pursuant to this subdivision shall not take
10 place if a bird has been struck with any thrown or discharged projectile, trapped,
11 netted, caught, or snared.

12 (c) Notwithstanding subdivisions (a) and (b), any officer deputized pursuant to
13 this code may interrupt any ongoing salvaging of dead nongame carcasses,
14 feathers, skins, or parts if, in the officer's judgment, the activity causes a public
15 disruption, safety hazard, or is detrimental to the ability of the department to
16 prevent a possible violation of this section. The officer may seize any of the
17 salvaged feathers, carcasses, skins, or parts and has the option of returning them to
18 the general location from where they were salvaged.

19 **Comment.** Subdivision (b) of Section 3801.6 is amended to reflect nonsubstantive
20 reorganization of the statutes governing control of deadly weapons.

21 **Fish & Game Code § 10500 (amended). Taking or possessing in refuges**

22 SEC. _____. Section 10500 of the Fish and Game Code is amended to read:

23 10500. Except under a permit or specific authorization, it is unlawful to do any
24 of the following:

25 (a) To take or possess any bird or mammal, or part thereof, in any game refuge.

26 (b) To use or have in possession in a game refuge, any firearm, BB device as
27 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
28 crossbow, bow and arrow, or any trap or other contrivance designed to be, or
29 capable of being, used to take birds or mammals, or to discharge any firearm or
30 BB device or to release any arrow or crossbow bolt into any game refuge.

31 (c) To take or possess any species of fish or amphibian, or part thereof, in any
32 fish refuge, or to use or have in possession in that refuge any contrivance designed
33 to be used for catching fish.

34 (d) To take or possess any bird in, or to discharge any firearm or BB device, or
35 to release any arrow or crossbow bolt within or into, any waterfowl refuge.

36 (e) To take or possess any quail in a quail refuge.

37 (f) To take or possess any invertebrate or specimen of marine plant life in a
38 marine life refuge.

39 (g) To take or possess any clam in a clam refuge or to possess in ~~such~~ a clam
40 refuge any instrument or apparatus capable of being used to dig clams.

41 **Comment.** Subdivision (b) of Section 10500 is amended to reflect nonsubstantive
42 reorganization of the statutes governing control of deadly weapons.

1 Subdivision (g) is amended to make a technical revision.

2 **Fish & Game Code § 10506 (amended). Travel through game refuge**

3 SEC. ____ . Section 10506 of the Fish and Game Code is amended to read:

4 10506. Nothing in this code prohibits the possession of firearms, BB devices as
5 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
6 crossbows and bolts, or bows and arrows by persons when traveling through any
7 game refuges when the firearms are taken apart or encased and unloaded and the
8 bows are unstrung or stored separately from any arrow or bolt. When the traveling
9 is done on a route other than a public highway or other public thoroughfare or
10 right of way, notice shall be given to the department at least 24 hours before that
11 traveling. The notice shall give the name and address of the person intending to
12 travel through the refuge, the name of the refuge, the approximate route, and the
13 approximate time when that person intends to travel through the refuge.

14 **Comment.** Section 10506 is amended to reflect nonsubstantive reorganization of the statutes
15 governing control of deadly weapons.

GOVERNMENT CODE

16 **Gov't Code § 6254 (amended). Records not required to be disclosed**

17 SEC. ____ . Section 6254 of the Government Code is amended to read:

18 6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this
19 chapter shall be construed to require disclosure of records that are any of the
20 following:

21 (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are
22 not retained by the public agency in the ordinary course of business, if the public
23 interest in withholding those records clearly outweighs the public interest in
24 disclosure.

25 (b) Records pertaining to pending litigation to which the public agency is a
26 party, or to claims made pursuant to Division 3.6 (commencing with Section 810),
27 until the pending litigation or claim has been finally adjudicated or otherwise
28 settled.

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

31 (d) Contained in or related to any of the following:

32 (1) Applications filed with any state agency responsible for the regulation or
33 supervision of the issuance of securities or of financial institutions, including, but
34 not limited to, banks, savings and loan associations, industrial loan companies,
35 credit unions, and insurance companies.

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

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

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

6 (e) Geological and geophysical data, plant production data, and similar
7 information relating to utility systems development, or market or crop reports, that
8 are obtained in confidence from any person.

9 (f) Records of complaints to, or investigations conducted by, or records of
10 intelligence information or security procedures of, the office of the Attorney
11 General and the Department of Justice, the California Emergency Management
12 Agency, and any state or local police agency, or any investigatory or security files
13 compiled by any other state or local police agency, or any investigatory or security
14 files compiled by any other state or local agency for correctional, law
15 enforcement, or licensing purposes. However, state and local law enforcement
16 agencies shall disclose the names and addresses of persons involved in, or
17 witnesses other than confidential informants to, the incident, the description of any
18 property involved, the date, time, and location of the incident, all diagrams,
19 statements of the parties involved in the incident, the statements of all witnesses,
20 other than confidential informants, to the victims of an incident, or an authorized
21 representative thereof, an insurance carrier against which a claim has been or
22 might be made, and any person suffering bodily injury or property damage or loss,
23 as the result of the incident caused by arson, burglary, fire, explosion, larceny,
24 robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision
25 (b) of Section 13951, unless the disclosure would endanger the safety of a witness
26 or other person involved in the investigation, or unless disclosure would endanger
27 the successful completion of the investigation or a related investigation. However,
28 nothing in this division shall require the disclosure of that portion of those
29 investigative files that reflects the analysis or conclusions of the investigating
30 officer.

31 Customer lists provided to a state or local police agency by an alarm or security
32 company at the request of the agency shall be construed to be records subject to
33 this subdivision.

34 Notwithstanding any other provision of this subdivision, state and local law
35 enforcement agencies shall make public the following information, except to the
36 extent that disclosure of a particular item of information would endanger the safety
37 of a person involved in an investigation or would endanger the successful
38 completion of the investigation or a related investigation:

39 (1) The full name and occupation of every individual arrested by the agency, the
40 individual's physical description including date of birth, color of eyes and hair,
41 sex, height and weight, the time and date of arrest, the time and date of booking,
42 the location of the arrest, the factual circumstances surrounding the arrest, the
43 amount of bail set, the time and manner of release or the location where the

1 individual is currently being held, and all charges the individual is being held
2 upon, including any outstanding warrants from other jurisdictions and parole or
3 probation holds.

4 (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the
5 time, substance, and location of all complaints or requests for assistance received
6 by the agency and the time and nature of the response thereto, including, to the
7 extent the information regarding crimes alleged or committed or any other incident
8 investigated is recorded, the time, date, and location of occurrence, the time and
9 date of the report, the name and age of the victim, the factual circumstances
10 surrounding the crime or incident, and a general description of any injuries,
11 property, or weapons involved. The name of a victim of any crime defined by
12 Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f,
13 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by
14 Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition
15 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6,
16 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's
17 request, or at the request of the victim's parent or guardian if the victim is a minor.
18 When a person is the victim of more than one crime, information disclosing that
19 the person is a victim of a crime defined in any of the sections of the Penal Code
20 set forth in this subdivision may be deleted at the request of the victim, or the
21 victim's parent or guardian if the victim is a minor, in making the report of the
22 crime, or of any crime or incident accompanying the crime, available to the public
23 in compliance with the requirements of this paragraph.

24 (3) Subject to the restrictions of Section 841.5 of the Penal Code and this
25 subdivision, the current address of every individual arrested by the agency and the
26 current address of the victim of a crime, where the requester declares under
27 penalty of perjury that the request is made for a scholarly, journalistic, political, or
28 governmental purpose, or that the request is made for investigation purposes by a
29 licensed private investigator as described in Chapter 11.3 (commencing with
30 Section 7512) of Division 3 of the Business and Professions Code. However, the
31 address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264,
32 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5,
33 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of
34 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006,
35 statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or
36 647.6 of the Penal Code shall remain confidential. Address information obtained
37 pursuant to this paragraph may not be used directly or indirectly, or furnished to
38 another, to sell a product or service to any individual or group of individuals, and
39 the requester shall execute a declaration to that effect under penalty of perjury.
40 Nothing in this paragraph shall be construed to prohibit or limit a scholarly,
41 journalistic, political, or government use of address information obtained pursuant
42 to this paragraph.

1 (g) Test questions, scoring keys, and other examination data used to administer a
2 licensing examination, examination for employment, or academic examination,
3 except as provided for in Chapter 3 (commencing with Section 99150) of Part 65
4 of Division 14 of Title 3 of the Education Code.

5 (h) The contents of real estate appraisals or engineering or feasibility estimates
6 and evaluations made for or by the state or local agency relative to the acquisition
7 of property, or to prospective public supply and construction contracts, until all of
8 the property has been acquired or all of the contract agreement obtained. However,
9 the law of eminent domain shall not be affected by this provision.

10 (i) Information required from any taxpayer in connection with the collection of
11 local taxes that is received in confidence and the disclosure of the information to
12 other persons would result in unfair competitive disadvantage to the person
13 supplying the information.

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

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

21 (l) Correspondence of and to the Governor or employees of the Governor's
22 office or in the custody of or maintained by the Governor's Legal Affairs
23 Secretary. However, public records shall not be transferred to the custody of the
24 Governor's Legal Affairs Secretary to evade the disclosure provisions of this
25 chapter.

26 (m) In the custody of or maintained by the Legislative Counsel, except those
27 records in the public database maintained by the Legislative Counsel that are
28 described in Section 10248.

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

32 (o) Financial data contained in applications for financing under Division 27
33 (commencing with Section 44500) of the Health and Safety Code, where an
34 authorized officer of the California Pollution Control Financing Authority
35 determines that disclosure of the financial data would be competitively injurious to
36 the applicant and the data is required in order to obtain guarantees from the United
37 States Small Business Administration. The California Pollution Control Financing
38 Authority shall adopt rules for review of individual requests for confidentiality
39 under this section and for making available to the public those portions of an
40 application that are subject to disclosure under this chapter.

41 (p) Records of state agencies related to activities governed by Chapter 10.3
42 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525),
43 and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state

1 agency's deliberative processes, impressions, evaluations, opinions,
2 recommendations, meeting minutes, research, work products, theories, or strategy,
3 or that provide instruction, advice, or training to employees who do not have full
4 collective bargaining and representation rights under these chapters. Nothing in
5 this subdivision shall be construed to limit the disclosure duties of a state agency
6 with respect to any other records relating to the activities governed by the
7 employee relations acts referred to in this subdivision.

8 (q) Records of state agencies related to activities governed by Article 2.6
9 (commencing with Section 14081), Article 2.8 (commencing with Section
10 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part
11 3 of Division 9 of the Welfare and Institutions Code, that reveal the special
12 negotiator's deliberative processes, discussions, communications, or any other
13 portion of the negotiations with providers of health care services, impressions,
14 opinions, recommendations, meeting minutes, research, work product, theories, or
15 strategy, or that provide instruction, advice, or training to employees.

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

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

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

33 (r) Records of Native American graves, cemeteries, and sacred places and
34 records of Native American places, features, and objects described in Sections
35 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the
36 possession of, the Native American Heritage Commission, another state agency, or
37 a local agency.

38 (s) A final accreditation report of the Joint Commission on Accreditation of
39 Hospitals that has been transmitted to the State Department of Health Care
40 Services pursuant to subdivision (b) of Section 1282 of the Health and Safety
41 Code.

42 (t) Records of a local hospital district, formed pursuant to Division 23
43 (commencing with Section 32000) of the Health and Safety Code, or the records

1 of a municipal hospital, formed pursuant to Article 7 (commencing with Section
2 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of
3 Division 3 of Title 4 of this code, that relate to any contract with an insurer or
4 nonprofit hospital service plan for inpatient or outpatient services for alternative
5 rates pursuant to Section 10133 of the Insurance Code. However, the record shall
6 be open to inspection within one year after the contract is fully executed.

7 (u)(1) Information contained in applications for licenses to carry firearms issued
8 pursuant to Section ~~12050~~ 26150, 26155, 26170, or 26215 of the Penal Code by
9 the sheriff of a county or the chief or other head of a municipal police department
10 that indicates when or where the applicant is vulnerable to attack or that concerns
11 the applicant's medical or psychological history or that of members of his or her
12 family.

13 (2) The home address and telephone number of peace officers, judges, court
14 commissioners, and magistrates that are set forth in applications for licenses to
15 carry firearms issued pursuant to Section ~~12050~~ 26150, 26155, 26170, or 26215 of
16 the Penal Code by the sheriff of a county or the chief or other head of a municipal
17 police department.

18 (3) The home address and telephone number of peace officers, judges, court
19 commissioners, and magistrates that are set forth in licenses to carry firearms
20 issued pursuant to Section ~~12050~~ 26150, 26155, 26170, or 26215 of the Penal
21 Code by the sheriff of a county or the chief or other head of a municipal police
22 department.

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

31 (2)(A) Except for the portion of a contract that contains the rates of payment,
32 contracts for health coverage entered into pursuant to Part 6.3 (commencing with
33 Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the
34 Insurance Code, on or after July 1, 1991, shall be open to inspection one year after
35 their effective dates.

36 (B) If a contract that is entered into prior to July 1, 1991, is amended on or after
37 July 1, 1991, the amendment, except for any portion containing the rates of
38 payment, shall be open to inspection one year after the amendment has been fully
39 executed.

40 (3) Three years after a contract or amendment is open to inspection pursuant to
41 this subdivision, the portion of the contract or amendment containing the rates of
42 payment shall be open to inspection.

1 (4) Notwithstanding any other provision of law, the entire contract or
2 amendments to a contract shall be open to inspection by the Joint Legislative
3 Audit Committee. The committee shall maintain the confidentiality of the
4 contracts and amendments thereto, until the contract or amendments to a contract
5 are open to inspection pursuant to paragraph (3).

6 (w)(1) Records of the Managed Risk Medical Insurance Board related to
7 activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of
8 Division 2 of the Insurance Code, and that reveal the deliberative processes,
9 discussions, communications, or any other portion of the negotiations with health
10 plans, or the impressions, opinions, recommendations, meeting minutes, research,
11 work product, theories, or strategy of the board or its staff, or records that provide
12 instructions, advice, or training to employees.

13 (2) Except for the portion of a contract that contains the rates of payment,
14 contracts for health coverage entered into pursuant to Chapter 8 (commencing
15 with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after
16 January 1, 1993, shall be open to inspection one year after they have been fully
17 executed.

18 (3) Notwithstanding any other provision of law, the entire contract or
19 amendments to a contract shall be open to inspection by the Joint Legislative
20 Audit Committee. The committee shall maintain the confidentiality of the
21 contracts and amendments thereto, until the contract or amendments to a contract
22 are open to inspection pursuant to paragraph (2).

23 (x) Financial data contained in applications for registration, or registration
24 renewal, as a service contractor filed with the Director of Consumer Affairs
25 pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the
26 Business and Professions Code, for the purpose of establishing the service
27 contractor's net worth, or financial data regarding the funded accounts held in
28 escrow for service contracts held in force in this state by a service contractor.

29 (y)(1) Records of the Managed Risk Medical Insurance Board related to
30 activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4
31 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and
32 that reveal the deliberative processes, discussions, communications, or any other
33 portion of the negotiations with entities contracting or seeking to contract with the
34 board, or the impressions, opinions, recommendations, meeting minutes, research,
35 work product, theories, or strategy of the board or its staff, or records that provide
36 instructions, advice, or training to employees.

37 (2)(A) Except for the portion of a contract that contains the rates of payment,
38 contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or
39 Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance
40 Code, on or after January 1, 1998, shall be open to inspection one year after their
41 effective dates.

42 (B) If a contract entered into pursuant to Part 6.2 (commencing with Section
43 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the

1 Insurance Code is amended, the amendment shall be open to inspection one year
2 after the amendment has been fully executed.

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

6 (4) Notwithstanding any other provision of law, the entire contract or
7 amendments to a contract shall be open to inspection by the Joint Legislative
8 Audit Committee. The committee shall maintain the confidentiality of the
9 contracts and amendments thereto until the contract or amendments to a contract
10 are open to inspection pursuant to paragraph (2) or (3).

11 (5) The exemption from disclosure provided pursuant to this subdivision for the
12 contracts, deliberative processes, discussions, communications, negotiations,
13 impressions, opinions, recommendations, meeting minutes, research, work
14 product, theories, or strategy of the board or its staff shall also apply to the
15 contracts, deliberative processes, discussions, communications, negotiations,
16 impressions, opinions, recommendations, meeting minutes, research, work
17 product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with
18 Section 12699.50) of Division 2 of the Insurance Code.

19 (z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section
20 2891.1 of the Public Utilities Code.

21 (aa) A document prepared by or for a state or local agency that assesses its
22 vulnerability to terrorist attack or other criminal acts intended to disrupt the public
23 agency's operations and that is for distribution or consideration in a closed
24 session.

25 (ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of
26 the United States Code, that is voluntarily submitted to the California Emergency
27 Management Agency for use by that office, including the identity of the person
28 who or entity that voluntarily submitted the information. As used in this
29 subdivision, "voluntarily submitted" means submitted in the absence of the office
30 exercising any legal authority to compel access to or submission of critical
31 infrastructure information. This subdivision shall not affect the status of
32 information in the possession of any other state or local governmental agency.

33 (ac) All information provided to the Secretary of State by a person for the
34 purpose of registration in the Advance Health Care Directive Registry, except that
35 those records shall be released at the request of a health care provider, a public
36 guardian, or the registrant's legal representative.

37 Nothing in this section prevents any agency from opening its records concerning
38 the administration of the agency to public inspection, unless disclosure is
39 otherwise prohibited by law.

40 Nothing in this section prevents any health facility from disclosing to a certified
41 bargaining agent relevant financing information pursuant to Section 8 of the
42 National Labor Relations Act (29 U.S.C. Sec. 158).

1 **Comment.** Subdivision (u) of Section 6254 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 **Gov't Code § 6276.18 (amended). Partial list of records and information exempt from**
4 **Public Records Act**

5 SEC. ____ . Section 6276.18 of the Government Code is amended to read:

6 6276.18. Family counselor and client, confidential information, Section 4982,
7 Business and Professions Code.

8 Family Court, records, Section 1818, Family Law Code.

9 Farm product processor license, confidentiality of financial statements, Section
10 55523.6, Food and Agricultural Code.

11 Farm product processor licensee, confidentiality of grape purchases, Section
12 55601.5, Food and Agricultural Code.

13 Fee payer information, prohibition against disclosure by Board of Equalization
14 and others, Section 55381, Revenue and Taxation Code.

15 Financial institutions, issuance of securities, reports and records of state
16 agencies, subdivision (d), Section 6254, Government Code.

17 Financial records, confidentiality of, Sections 7470, 7471, and 7473,
18 Government Code.

19 Financial statements of insurers, confidentiality of information received, Section
20 925.3, Insurance Code.

21 Financial statements and questionnaires, of prospective bidders for the state,
22 confidentiality of, Section 10165, Public Contract Code.

23 Financial statements and questionnaires, of prospective bidders for California
24 State University contracts, confidentiality of, Section 10763, Public Contract
25 Code.

26 Firearm license applications, subdivision (u), Section 6254, Government Code.

27 Firearm sale or transfer, confidentiality of records, ~~Section 12082~~ Chapter 5
28 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Penal Code.

29 Firefighters Service Award, confidentiality of data filed with the Board of
30 Administration of the Public Employees' Retirement System, Section 50955,
31 Government Code.

32 Fish and wildlife law enforcement agreements with other states, confidentiality
33 of information, Section 391, Fish and Game Code.

34 Fish and wildlife taken illegally, public record status of records of case, Section
35 2584, Fish and Game Code.

36 Food stamps, disclosure of information, Section 18909, Welfare and Institutions
37 Code.

38 Foreign marketing of agricultural products, confidentiality of financial
39 information, Section 58577, Food and Agricultural Code.

40 Forest fires, anonymity of informants, Section 4417, Public Resources Code.

41 Foster homes, identifying information, Section 1536, Health and Safety Code.

1 Franchise Tax Board, access to Franchise Tax Board information by the State
2 Department of Social Services, Section 11025, Welfare and Institutions Code.

3 Franchise Tax Board, auditing, confidentiality of, Section 90005, Government
4 Code.

5 Franchises, applications, and reports filed with Commissioner of Corporations,
6 disclosure and withholding from public inspection, Section 31504, Corporations
7 Code.

8 Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game
9 Code.

10 **Comment.** Section 6276.18 is amended to reflect nonsubstantive reorganization of the statutes
11 governing control of deadly weapons.

12 **Gov't Code § 53071.5 (amended). Imitation firearms**

13 SEC. ____ . Section 53071.5 of the Government Code is amended to read:

14 53071.5. By the enforcement of this section, the Legislature occupies the whole
15 field of regulation of the manufacture, sale, or possession of imitation firearms, as
16 defined in ~~Section 12550 subdivision (a) of Section 16700~~ of the Penal Code, and
17 that ~~section subdivision~~ shall preempt and be exclusive of all regulations relating
18 to the manufacture, sale, or possession of imitation firearms, including regulations
19 governing the manufacture, sale, or possession of BB devices and air rifles
20 described in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code.

21 **Comment.** Section 53071.5 is amended to reflect nonsubstantive reorganization of the statutes
22 governing control of deadly weapons.

HEALTH & SAFETY CODE

23 **Health & Safety Code § 1257.7 (amended). Security and safety assessment and security plan**
24 **by hospitals**

25 SEC. ____ . Section 1257.7 of the Health and Safety Code is amended to read:

26 1257.7. (a) By July 1, 1995, all hospitals licensed pursuant to subdivisions (a),
27 (b), and (f) of Section 1250 shall conduct a security and safety assessment and,
28 using the assessment, develop a security plan with measures to protect personnel,
29 patients, and visitors from aggressive or violent behavior. The security and safety
30 assessment shall examine trends of aggressive or violent behavior at the facility.
31 These hospitals shall track incidents of aggressive or violent behavior as part of
32 the quality assessment and improvement program and for the purposes of
33 developing a security plan to deter and manage further aggressive or violent acts
34 of a similar nature. The plan may include, but shall not be limited to, security
35 considerations relating to all of the following:

36 (1) Physical layout.

37 (2) Staffing.

38 (3) Security personnel availability.

39 (4) Policy and training related to appropriate responses to violent acts.

1 In developing this plan, the hospital shall consider any guidelines or standards
2 on violence in health care facilities issued by the state department, the Division of
3 Occupational Safety and Health, and the federal Occupational Safety and Health
4 Administration. As part of the security plan, a hospital shall adopt security policies
5 including, but not limited to, personnel training policies designed to protect
6 personnel, patients, and visitors from aggressive or violent behavior.

7 (b) The individual or members of a hospital committee responsible for
8 developing the security plan shall be familiar with all of the following:

9 (1) The role of security in hospital operations.

10 (2) Hospital organization.

11 (3) Protective measures, including alarms and access control.

12 (4) The handling of disturbed patients, visitors, and employees.

13 (5) Identification of aggressive and violent predicting factors.

14 (6) Hospital safety and emergency preparedness.

15 (7) The rudiments of documenting and reporting crimes, including, by way of
16 example, not disturbing a crime scene.

17 (c) The hospital shall have sufficient personnel to provide security pursuant to
18 the security plan developed pursuant to subdivision (a). Persons regularly assigned
19 to provide security in a hospital setting shall be trained regarding the role of
20 security in hospital operations, including the identification of aggressive and
21 violent predicting factors, and management of violent disturbances.

22 (d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as
23 defined in Section 242 of the Penal Code, that results in injury or involves the use
24 of a firearm or other dangerous weapon, against any on-duty hospital personnel
25 shall be reported to the local law enforcement agency within 72 hours of the
26 incident. Any other act of assault, as defined in Section 240 of the Penal Code, or
27 battery as defined in Section 242 of the Penal Code, against any on-duty hospital
28 personnel may be reported to the local law enforcement agency within 72 hours of
29 the incident. No health facility or employee of a health facility who reports a
30 known or suspected instance of assault or battery pursuant to this section shall be
31 civilly or criminally liable for any report required by this section. No health
32 facility or employee of a health facility who reports a known or suspected instance
33 of assault or battery that is authorized, but not required, by this section, shall be
34 civilly or criminally liable for the report authorized by this section unless it can be
35 proven that a false report was made and the health facility or its employee knew
36 that the report was false or was made with reckless disregard of the truth or falsity
37 of the report, and any health facility or employee of a health facility who makes a
38 report known to be false or with reckless disregard of the truth or falsity of the
39 report shall be liable for any damages caused. Any individual knowingly
40 interfering with or obstructing the lawful reporting process shall be guilty of a
41 misdemeanor. "Dangerous weapon," as used in this section, means any weapon
42 the possession or concealed carrying of which is prohibited by ~~Section 12020~~ any
43 provision listed in Section 16590 of the Penal Code.

1 **Comment.** Subdivision (d) of Section 1257.7 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 **Health & Safety Code § 12000 (amended). “Explosives”**

4 SEC. _____. Section 12000 of the Health and Safety Code is amended to read:

5 12000. For the purposes of this part, “explosives” means any substance, or
6 combination of substances, the primary or common purpose of which is detonation
7 or rapid combustion, and which is capable of a relatively instantaneous or rapid
8 release of gas and heat, or any substance, the primary purpose of which, when
9 combined with others, is to form a substance capable of a relatively instantaneous
10 or rapid release of gas and heat. “Explosives” includes, but is not limited to, any
11 explosives as defined in Section 841 of Title 18 of the United States Code and
12 published pursuant to Section 555.23 of Title 27 of the Code of Federal
13 Regulations, and any of the following:

14 (a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black
15 powder, smokeless powder, propellant explosives, detonating primers, blasting
16 caps, or commercial boosters.

17 (b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as
18 classified by the United States Department of Transportation.

19 (c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5
20 explosives by the United States Department of Transportation.

21 (d) Any material designated as an explosive by the State Fire Marshal. The
22 designation shall be made pursuant to the classification standards established by
23 the United States Department of Transportation. The State Fire Marshal shall
24 adopt regulations in accordance with the Government Code to establish procedures
25 for the classification and designation of explosive materials or explosive devices
26 that are not under the jurisdiction of the United States Department of
27 Transportation pursuant to provisions of Section 841 of Title 18 of the United
28 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
29 Federal Regulations that define explosives.

30 (e) Certain division 1.4 explosives as designated by the United States
31 Department of Transportation when listed in regulations adopted by the State Fire
32 Marshal.

33 (f) For the purposes of this part, “explosives” does not include any destructive
34 device, as defined in Section ~~12301~~ 16460 of the Penal Code, nor does it include
35 ammunition or small arms primers manufactured for use in shotguns, rifles, and
36 pistols.

37 **Comment.** Subdivision (f) of Section 12000 is amended to reflect nonsubstantive
38 reorganization of the statutes governing control of deadly weapons.

39 **Health & Safety Code § 12101 (amended). Actions requiring permit**

40 SEC. _____. Section 12101 of the Health and Safety Code is amended to read:

1 12101. (a) No person shall do any one of the following without first having
2 made application for and received a permit in accordance with this section:

3 (1) Manufacture explosives.

4 (2) Sell, furnish, or give away explosives.

5 (3) Receive, store, or possess explosives.

6 (4) Transport explosives.

7 (5) Use explosives.

8 (6) Operate a terminal for handling explosives.

9 (7) Park or leave standing any vehicle carrying explosives, except when parked
10 or left standing in or at a safe stopping place designated as such by the Department
11 of the California Highway Patrol under Division 14 (commencing with Section
12 31600) of the Vehicle Code.

13 (b) Application for a permit shall be made to the appropriate issuing authority.

14 (c)(1) A permit shall be obtained from the issuing authority having the
15 responsibility in the area where the activity, as specified in subdivision (a), is to be
16 conducted.

17 (2) If the person holding a valid permit for the use or storage of explosives
18 desires to purchase or receive explosives in a jurisdiction other than that of
19 intended use or storage, the person shall first present the permit to the issuing
20 authority in the jurisdiction of purchase or receipt for endorsement. The issuing
21 authority may include any reasonable restrictions or conditions which the authority
22 finds necessary for the prevention of fire and explosion, the preservation of life,
23 safety, or the control and security of explosives within the authority's jurisdiction.
24 If, for any reason, the issuing authority refuses to endorse the permit previously
25 issued in the area of intended use or storage, the authority shall immediately notify
26 both the issuing authority who issued the permit and the Department of Justice of
27 the fact of the refusal and the reasons for the refusal.

28 (3) Every person who sells, gives away, delivers, or otherwise disposes of
29 explosives to another person shall first be satisfied that the person receiving the
30 explosives has a permit valid for that purpose. When the permit to receive
31 explosives indicates that the intended storage or use of the explosives is other than
32 in that area in which the permittee receives the explosives, the person who sells,
33 gives away, delivers, or otherwise disposes of the explosives shall insure that the
34 permit has been properly endorsed by a local issuing authority and, further, shall
35 immediately send a copy of the record of sale to the issuing authority who
36 originally issued the permit in the area of intended storage or use. The issuing
37 authority in the area in which the explosives are received or sold shall not issue a
38 permit for the possession, use, or storage of explosives in an area not within the
39 authority's jurisdiction.

40 (d) In the event any person desires to receive explosives for use in an area
41 outside of this state, a permit to receive the explosives shall be obtained from the
42 State Fire Marshal.

1 (e) A permit may include any restrictions or conditions which the issuing
2 authority finds necessary for the prevention of fire and explosion, the preservation
3 of life, safety, or the control and security of explosives.

4 (f) A permit shall remain valid only until the time when the act or acts
5 authorized by the permit are performed, but in no event shall the permit remain
6 valid for a period longer than one year from the date of issuance of the permit.

7 (g) Any valid permit which authorizes the performance of any act shall not
8 constitute authorization for the performance of any act not stipulated in the permit.

9 (h) An issuing authority shall not issue a permit authorizing the transportation of
10 explosives pursuant to this section if the display of placards for that transportation
11 is required by Section 27903 of the Vehicle Code, unless the driver possesses a
12 license for the transportation of hazardous materials issued pursuant to Division
13 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are
14 a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and
15 25115 of the Health and Safety Code, and the transporter is currently registered as
16 a hazardous waste hauler pursuant to Section 25163 of the Health and Safety
17 Code.

18 (i) An issuing authority shall not issue a permit pursuant to this section
19 authorizing the handling or storage of division 1.1, 1.2, or 1.3 explosives in a
20 building, unless the building has caution placards which meet the standards
21 established pursuant to subdivision (g) of Section 12081.

22 (j)(1) A permit shall not be issued to a person who meets any of the following
23 criteria:

24 (A) He or she has been convicted of a felony.

25 (B) He or she is addicted to a narcotic drug.

26 (C) He or she is in a class prohibited by state or federal law from possessing,
27 receiving, owning, or purchasing a firearm.

28 (2) For purposes of determining whether a person meets any of the criteria set
29 forth in this subdivision, the issuing authority shall obtain two sets of fingerprints
30 on prescribed cards from all persons applying for a permit under this section and
31 shall submit these cards to the Department of Justice. The Department of Justice
32 shall utilize the fingerprint cards to make inquiries both within this state and to the
33 Federal Bureau of Investigation regarding the criminal history of the applicant
34 identified on the fingerprint card.

35 This paragraph does not apply to any person possessing a current certificate of
36 eligibility issued pursuant to ~~paragraph (4) of subdivision (a) of Section 12071~~
37 subdivisions (a) to (c), inclusive, of Section 26710 of the Penal Code or to any
38 holder of a dangerous weapons permit or license issued pursuant to ~~Section 12095,~~
39 ~~12230, 12250, 12286, or 12305~~ 31000, 32650, or 33300 of the Penal Code, or
40 pursuant to Sections 18900 to 18910, inclusive, or Sections 32700 to 32720,
41 inclusive, of the Penal Code.

42 (k) An issuing authority shall inquire with the Department of Justice for the
43 purposes of determining whether a person who is applying for a permit meets any

1 of the criteria specified in subdivision (j). The Department of Justice shall
2 determine whether a person who is applying for a permit meets any of the criteria
3 specified in subdivision (j) and shall either grant or deny clearance for a permit to
4 be issued pursuant to the determination. The Department of Justice shall not
5 disclose the contents of a person's records to any person who is not authorized to
6 receive the information in order to ensure confidentiality.

7 **Comment.** Subdivision (j) of Section 12101 is amended to reflect nonsubstantive
8 reorganization of the statutes governing control of deadly weapons.

9 **Health & Safety Code § 12540 (amended). Application of part**

10 SEC. _____. Section 12540 of the Health and Safety Code is amended to read:

11 12540. The provisions of this part shall not apply to any of the following:

12 (a) Explosives regulated under Part 1 (commencing with Section 12000) of
13 Division 11.

14 (b) Arms and handguns defined as firearms by the Federal Gun Control Act of
15 1968, as well as such devices and weapons classified under Section ~~12020 or~~
16 ~~12301~~ 16460 of the Penal Code or any provision listed in Section 16590 of the
17 Penal Code, including blank cartridge pistols of the type used at sporting events or
18 theatrical productions.

19 (c) Research or experiments with rockets or missiles or the production or
20 transportation of rockets or missiles by the Department of Defense of the United
21 States, or by any agency or organization acting pursuant to a contract with the
22 Department of Defense for the development and production of rockets or missiles.

23 (d) Paper caps which contain less than 0.25 grain of pyrotechnic composition
24 per unit load.

25 **Comment.** Subdivision (b) of Section 12540 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Health & Safety Code § 12756 (amended). State Fire Marshall regulations and**
28 **flamethrowing devices**

29 SEC. _____. Section 12756 of the Health and Safety Code is amended to read:

30 12756. The State Fire Marshal shall adopt regulations to administer this part and
31 establish standards for the background investigation of an applicant for, and holder
32 of, a flamethrowing device permit, and for the use, storage, and transportation of a
33 flamethrowing device. In adopting these regulations, the State Fire Marshal shall
34 consult with the Department of Justice regarding regulations for the use and
35 possession of destructive devices (Chapter 12.5 (commencing with Section 970) of
36 Division 1 of Title 11 of the California Code of Regulations). These regulations
37 for the use and possession of destructive devices may provide suggestions for
38 potential methods to utilize in developing standards and shall serve as guidance
39 only. At a minimum, the regulations adopted by the State Fire Marshal shall
40 require a permitholder to possess a current, valid certificate of eligibility issued by

1 the Department of Justice pursuant to ~~paragraph (4) of subdivision (a) of Section~~
2 ~~12071 subdivisions (a) to (c), inclusive, of Section 26710~~ of the Penal Code.

3 **Comment.** Section 12756 is amended to reflect nonsubstantive reorganization of the statutes
4 governing control of deadly weapons.

5 **Health & Safety Code § 12757 (amended). Permit to use and possess flamethrowing device**

6 SEC. _____. Section 12757 of the Health and Safety Code is amended to read:

7 12757. The State Fire Marshal may issue or renew a permit to use and possess a
8 flamethrowing device only if all of the following conditions are met:

9 (a) The applicant or permitholder is not addicted to any controlled substance.

10 (b) The applicant or permitholder possesses a current, valid certificate of
11 eligibility issued by the Department of Justice pursuant to ~~paragraph (4) of~~
12 ~~subdivision (a) of Section 12071 subdivisions (a) to (c), inclusive, of Section~~
13 ~~26710~~ of the Penal Code.

14 (c) The applicant or permitholder meets the other standards specified in
15 regulations adopted pursuant to Section 12756.

16 **Comment.** Subdivision (b) of Section 12757 is amended to reflect nonsubstantive
17 reorganization of the statutes governing control of deadly weapons.

PENAL CODE

18 **Penal Code § 136.2 (amended). Orders upon belief of, or reasonable likelihood of, harm,**
19 **intimidation, or dissuasion of victim or witness**

20 SEC. _____. Section 136.2 of the Penal Code is amended to read:

21 136.2. (a) Except as provided in subdivision (c), upon a good cause belief that
22 harm to, or intimidation or dissuasion of, a victim or witness has occurred or is
23 reasonably likely to occur, any court with jurisdiction over a criminal matter may
24 issue orders including, but not limited to, the following:

25 (1) Any order issued pursuant to Section 6320 of the Family Code.

26 (2) An order that a defendant shall not violate any provision of Section 136.1.

27 (3) An order that a person before the court other than a defendant, including, but
28 not limited to, a subpoenaed witness or other person entering the courtroom of the
29 court, shall not violate any provisions of Section 136.1.

30 (4) An order that any person described in this section shall have no
31 communication whatsoever with any specified witness or any victim, except
32 through an attorney under any reasonable restrictions that the court may impose.

33 (5) An order calling for a hearing to determine if an order as described in
34 paragraphs (1) to (4), inclusive, should be issued.

35 (6) An order that a particular law enforcement agency within the jurisdiction of
36 the court provide protection for a victim or a witness, or both, or for immediate
37 family members of a victim or a witness who reside in the same household as the
38 victim or witness or within reasonable proximity of the victim's or witness'
39 household, as determined by the court. The order shall not be made without the

1 consent of the law enforcement agency except for limited and specified periods of
2 time and upon an express finding by the court of a clear and present danger of
3 harm to the victim or witness or immediate family members of the victim or
4 witness.

5 For purposes of this paragraph, “immediate family members” include the
6 spouse, children, or parents of the victim or witness.

7 (7)(A) Any order protecting victims of violent crime from all contact by the
8 defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of
9 violence, by the defendant. The court or its designee shall transmit orders made
10 under this paragraph to law enforcement personnel within one business day of the
11 issuance, modification, extension, or termination of the order, pursuant to
12 subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the
13 court to transmit the modification, extension, or termination orders made under
14 this paragraph to the same agency that entered the original protective order into
15 the Domestic Violence Restraining Order System.

16 (B)(i) If a court does not issue an order pursuant to subparagraph (A) in a case in
17 which the defendant is charged with a crime of domestic violence as defined in
18 Section 13700, the court on its own motion shall consider issuing a protective
19 order upon a good cause belief that harm to, or intimidation or dissuasion of, a
20 victim or witness has occurred or is reasonably likely to occur, that provides as
21 follows:

22 (I) The defendant shall not own, possess, purchase, receive, or attempt to
23 purchase or receive, a firearm while the protective order is in effect.

24 (II) The defendant shall relinquish any firearms that he or she owns or possesses
25 pursuant to Section 527.9 of the Code of Civil Procedure.

26 (ii) Every person who owns, possesses, purchases, or receives, or attempts to
27 purchase or receive, a firearm while this protective order is in effect is punishable
28 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

29 (C) Any order issued, modified, extended, or terminated by a court pursuant to
30 this paragraph shall be issued on forms adopted by the Judicial Council of
31 California and that have been approved by the Department of Justice pursuant to
32 subdivision (i) of Section 6380 of the Family Code. However, the fact that an
33 order issued by a court pursuant to this section was not issued on forms adopted by
34 the Judicial Council and approved by the Department of Justice shall not, in and of
35 itself, make the order unenforceable.

36 (b) Any person violating any order made pursuant to paragraphs (1) to (7),
37 inclusive, of subdivision (a) may be punished for any substantive offense
38 described in Section 136.1, or for a contempt of the court making the order. A
39 finding of contempt shall not be a bar to prosecution for a violation of Section
40 136.1. However, any person so held in contempt shall be entitled to credit for any
41 punishment imposed therein against any sentence imposed upon conviction of an
42 offense described in Section 136.1. Any conviction or acquittal for any substantive

1 offense under Section 136.1 shall be a bar to a subsequent punishment for
2 contempt arising out of the same act.

3 (c)(1) Notwithstanding subdivisions (a) and (e), an emergency protective order
4 issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of
5 Division 10 of the Family Code or Section 646.91 of the Penal Code shall have
6 precedence in enforcement over any other restraining or protective order, provided
7 the emergency protective order meets all of the following requirements:

8 (A) The emergency protective order is issued to protect one or more individuals
9 who are already protected persons under another restraining or protective order.

10 (B) The emergency protective order restrains the individual who is the restrained
11 person in the other restraining or protective order specified in subparagraph (A).

12 (C) The provisions of the emergency protective order are more restrictive in
13 relation to the restrained person than are the provisions of the other restraining or
14 protective order specified in subparagraph (A).

15 (2) An emergency protective order that meets the requirements of paragraph (1)
16 shall have precedence in enforcement over the provisions of any other restraining
17 or protective order only with respect to those provisions of the emergency
18 protective order that are more restrictive in relation to the restrained person.

19 (d)(1) A person subject to a protective order issued under this section shall not
20 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
21 the protective order is in effect.

22 (2) The court shall order a person subject to a protective order issued under this
23 section to relinquish any firearms he or she owns or possesses pursuant to Section
24 527.9 of the Code of Civil Procedure.

25 (3) Every person who owns, possesses, purchases or receives, or attempts to
26 purchase or receive a firearm while the protective order is in effect is punishable
27 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

28 (e)(1) In all cases where the defendant is charged with a crime of domestic
29 violence, as defined in Section 13700, the court shall consider issuing the above-
30 described orders on its own motion. All interested parties shall receive a copy of
31 those orders. In order to facilitate this, the court's records of all criminal cases
32 involving domestic violence shall be marked to clearly alert the court to this issue.

33 (2) In those cases in which a complaint, information, or indictment charging a
34 crime of domestic violence, as defined in Section 13700, has been issued, a
35 restraining order or protective order against the defendant issued by the criminal
36 court in that case has precedence in enforcement over any civil court order against
37 the defendant, unless a court issues an emergency protective order pursuant to
38 Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family
39 Code or Section 646.91 of the Penal Code, in which case the emergency protective
40 order shall have precedence in enforcement over any other restraining or
41 protective order, provided the emergency protective order meets the following
42 requirements:

1 (A) The emergency protective order is issued to protect one or more individuals
2 who are already protected persons under another restraining or protective order.

3 (B) The emergency protective order restrains the individual who is the restrained
4 person in the other restraining or protective order specified in subparagraph (A).

5 (C) The provisions of the emergency protective order are more restrictive in
6 relation to the restrained person than are the provisions of the other restraining or
7 protective order specified in subparagraph (A).

8 (3) Custody and visitation with respect to the defendant and his or her minor
9 children may be ordered by a family or juvenile court consistent with the protocol
10 established pursuant to subdivision (f), but if ordered after a criminal protective
11 order has been issued pursuant to this section, the custody and visitation order
12 shall make reference to, and acknowledge the precedence of enforcement of, any
13 appropriate criminal protective order. On or before July 1, 2006, the Judicial
14 Council shall modify the criminal and civil court forms consistent with this
15 subdivision.

16 (f) On or before January 1, 2003, the Judicial Council shall promulgate a
17 protocol, for adoption by each local court in substantially similar terms, to provide
18 for the timely coordination of all orders against the same defendant and in favor of
19 the same named victim or victims. The protocol shall include, but shall not be
20 limited to, mechanisms for assuring appropriate communication and information
21 sharing between criminal, family, and juvenile courts concerning orders and cases
22 that involve the same parties, and shall permit a family or juvenile court order to
23 coexist with a criminal court protective order subject to the following conditions:

24 (1) Any order that permits contact between the restrained person and his or her
25 children shall provide for the safe exchange of the children and shall not contain
26 language either printed or handwritten that violates a “no contact order” issued by
27 a criminal court.

28 (2) Safety of all parties shall be the courts’ paramount concern. The family or
29 juvenile court shall specify the time, day, place, and manner of transfer of the
30 child, as provided in Section 3100 of the Family Code.

31 (g) On or before January 1, 2003, the Judicial Council shall modify the criminal
32 and civil court protective order forms consistent with this section.

33 (h) In any case in which a complaint, information, or indictment charging a
34 crime of domestic violence, as defined in Section 13700, has been filed, the court
35 may consider, in determining whether good cause exists to issue an order under
36 paragraph (1) of subdivision (a), the underlying nature of the offense charged, and
37 the information provided to the court pursuant to Section 273.75.

38 **Comment.** Subdivisions (a) and (d) of Section 136.2 are amended to reflect nonsubstantive
39 reorganization of the statutes governing control of deadly weapons.

40 **Penal Code § 139 (amended). Punishment for threat to witness or victim by convicted felon**

41 SEC. ____ . Section 139 of the Penal Code is amended to read:

1 139. (a) Except as provided in Sections 71 and 136.1, any person who has been
2 convicted of any felony offense specified in ~~Section 12021.4~~ Chapter 3
3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 who willfully
4 and maliciously communicates to a witness to, or a victim of, the crime for which
5 the person was convicted, a credible threat to use force or violence upon that
6 person or that person's immediate family, shall be punished by imprisonment in
7 the county jail not exceeding one year or by imprisonment in the state prison for
8 two, three, or four years.

9 (b) Any person who is convicted of violating subdivision (a) who subsequently
10 is convicted of making a credible threat, as defined in subdivision (c), which
11 constitutes a threat against the life of, or a threat to cause great bodily injury to, a
12 person described in subdivision (a), shall be sentenced to consecutive terms of
13 imprisonment as prescribed in Section 1170.13.

14 (c) As used in this section, "a credible threat" is a threat made with the intent
15 and the apparent ability to carry out the threat so as to cause the target of the threat
16 to reasonably fear for his or her safety or the safety of his or her immediate family.

17 (d) The present incarceration of the person making the threat shall not be a bar
18 to prosecution under this section.

19 (e) As used in this section, "malice," "witness," and "victim" have the meanings
20 given in Section 136.

21 **Comment.** Subdivision (a) of Section 139 is amended to reflect nonsubstantive reorganization
22 of the statutes governing control of deadly weapons.

23 For guidance in applying this section, see Section 16015 (determining existence of prior
24 conviction).

25 **Penal Code § 166 (amended). Contempt of court**

26 SEC. _____. Section 166 of the Penal Code is amended to read:

27 166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty
28 of any contempt of court, of any of the following kinds, is guilty of a
29 misdemeanor:

30 (1) Disorderly, contemptuous, or insolent behavior committed during the sitting
31 of any court of justice, in the immediate view and presence of the court, and
32 directly tending to interrupt its proceedings or to impair the respect due to its
33 authority.

34 (2) Behavior as specified in paragraph (1) committed in the presence of any
35 referee, while actually engaged in any trial or hearing, pursuant to the order of any
36 court, or in the presence of any jury while actually sitting for the trial of a cause,
37 or upon any inquest or other proceedings authorized by law.

38 (3) Any breach of the peace, noise, or other disturbance directly tending to
39 interrupt the proceedings of any court.

40 (4) Willful disobedience of the terms as written of any process or court order or
41 out-of-state court order, lawfully issued by any court, including orders pending
42 trial.

1 (5) Resistance willfully offered by any person to the lawful order or process of
2 any court.

3 (6) The contumacious and unlawful refusal of any person to be sworn as a
4 witness; or, when so sworn, the like refusal to answer any material question.

5 (7) The publication of a false or grossly inaccurate report of the proceedings of
6 any court.

7 (8) Presenting to any court having power to pass sentence upon any prisoner
8 under conviction, or to any member of the court, any affidavit or testimony or
9 representation of any kind, verbal or written, in aggravation or mitigation of the
10 punishment to be imposed upon the prisoner, except as provided in this code.

11 (b)(1) Any person who is guilty of contempt of court under paragraph (4) of
12 subdivision (a) by willfully contacting a victim by telephone or mail, or directly,
13 and who has been previously convicted of a violation of Section 646.9 shall be
14 punished by imprisonment in a county jail for not more than one year, by a fine of
15 five thousand dollars (\$5,000), or by both that fine and imprisonment.

16 (2) For the purposes of sentencing under this subdivision, each contact shall
17 constitute a separate violation of this subdivision.

18 (3) The present incarceration of a person who makes contact with a victim in
19 violation of paragraph (1) is not a defense to a violation of this subdivision.

20 (c)(1) Notwithstanding paragraph (4) of subdivision (a), any willful and
21 knowing violation of any protective order or stay-away court order issued pursuant
22 to Section 136.2, in a pending criminal proceeding involving domestic violence, as
23 defined in Section 13700, or issued as a condition of probation after a conviction
24 in a criminal proceeding involving domestic violence, as defined in Section 13700,
25 or elder or dependent adult abuse, as defined in Section 368, or that is an order
26 described in paragraph (3), shall constitute contempt of court, a misdemeanor,
27 punishable by imprisonment in a county jail for not more than one year, by a fine
28 of not more than one thousand dollars (\$1,000), or by both that imprisonment and
29 fine.

30 (2) If a violation of paragraph (1) results in a physical injury, the person shall be
31 imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is
32 imposed, or the sentence is suspended.

33 (3) Paragraphs (1) and (2) apply to the following court orders:

34 (A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

35 (B) An order excluding one party from the family dwelling or from the dwelling
36 of the other.

37 (C) An order enjoining a party from specified behavior that the court determined
38 was necessary to effectuate the orders described in paragraph (1).

39 (4) A second or subsequent conviction for a violation of any order described in
40 paragraph (1) occurring within seven years of a prior conviction for a violation of
41 any of those orders and involving an act of violence or “a credible threat” of
42 violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by

1 imprisonment in a county jail not to exceed one year, or in the state prison for 16
2 months or two or three years.

3 (5) The prosecuting agency of each county shall have the primary responsibility
4 for the enforcement of the orders described in paragraph (1).

5 (d)(1) A person who owns, possesses, purchases, or receives a firearm knowing
6 he or she is prohibited from doing so by the provisions of a protective order as
7 defined in Section 136.2 of this code, Section 6218 of the Family Code, or
8 Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under
9 the provisions of ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal
10 Code.

11 (2) A person subject to a protective order described in paragraph (1) shall not be
12 prosecuted under this section for owning, possessing, purchasing, or receiving a
13 firearm to the extent that firearm is granted an exemption pursuant to subdivision
14 (h) of Section 6389 of the Family Code.

15 (e)(1) If probation is granted upon conviction of a violation of subdivision (c),
16 the court shall impose probation consistent with the provisions of Section
17 1203.097 of the Penal Code.

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

21 (A) That the defendant make payments to a battered women's shelter, up to a
22 maximum of one thousand dollars (\$1,000).

23 (B) That the defendant provide restitution to reimburse the victim for reasonable
24 costs of counseling and other reasonable expenses that the court finds are the
25 direct result of the defendant's offense.

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

32 (4) If the injury to a married person is caused in whole or in part by the criminal
33 acts of his or her spouse in violation of subdivision (c), the community property
34 may not be used to discharge the liability of the offending spouse for restitution to
35 the injured spouse required by Section 1203.04, as operative on or before August
36 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured
37 spouse and dependents required by this subdivision, until all separate property of
38 the offending spouse is exhausted.

39 (5) Any person violating any order described in subdivision (c) may be punished
40 for any substantive offenses described under Section 136.1 or 646.9. No finding of
41 contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9.
42 However, any person held in contempt for a violation of subdivision (c) shall be
43 entitled to credit for any punishment imposed as a result of that violation against

1 any sentence imposed upon conviction of an offense described in Section 136.1 or
2 646.9. Any conviction or acquittal for any substantive offense under Section 136.1
3 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the
4 same act.

5 **Comment.** Subdivision (d) of Section 166 is amended to reflect nonsubstantive reorganization
6 of the statutes governing control of deadly weapons.

7 **Penal Code § 171b (amended). Unauthorized possession of weapons in public building or at**
8 **public meeting**

9 SEC. ____ . Section 171b of the Penal Code is amended to read:

10 171b. (a) Any person who brings or possesses within any state or local public
11 building or at any meeting required to be open to the public pursuant to Chapter 9
12 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article
13 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2
14 of, the Government Code, any of the following is guilty of a public offense
15 punishable by imprisonment in a county jail for not more than one year, or in the
16 state prison:

17 (1) Any firearm.

18 (2) Any deadly weapon described in Section ~~653k or 12010~~ Section 17235 or in
19 any provision listed in Section 16590.

20 (3) Any knife with a blade length in excess of four inches, the blade of which is
21 fixed or is capable of being fixed in an unguarded position by the use of one or
22 two hands.

23 (4) Any unauthorized tear gas weapon.

24 (5) Any taser or stun gun, as defined in Section 244.5.

25 (6) Any instrument that expels a metallic projectile, such as a BB or pellet,
26 through the force of air pressure, CO2 pressure, or spring action, or any spot
27 marker gun or paint gun.

28 (b) Subdivision (a) shall not apply to, or affect, any of the following:

29 (1) A person who possesses weapons in, or transports weapons into, a court of
30 law to be used as evidence.

31 (2)(A) A duly appointed peace officer as defined in Chapter 4.5 (commencing
32 with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to
33 carry concealed weapons as described in ~~subdivision (a) of Section 12027~~ Article
34 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part
35 6, a full-time paid peace officer of another state or the federal government who is
36 carrying out official duties while in California, or any person summoned by any of
37 these officers to assist in making arrests or preserving the peace while he or she is
38 actually engaged in assisting the officer.

39 (B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person
40 who brings or possesses any weapon specified therein within any courtroom if he
41 or she is a party to an action pending before the court.

1 (3) A person holding a valid license to carry the firearm pursuant to ~~Article 3~~
2 ~~(commencing with Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4
3 (commencing with Section 26150) of Division 5 of Title 4 of Part 6.

4 (4) A person who has permission to possess that weapon granted in writing by a
5 duly authorized official who is in charge of the security of the state or local
6 government building.

7 (5) A person who lawfully resides in, lawfully owns, or is in lawful possession
8 of, that building with respect to those portions of the building that are not owned
9 or leased by the state or local government.

10 (6) A person licensed or registered in accordance with, and acting within the
11 course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter
12 11.6 (commencing with Section 7590) of Division 3 of the Business and
13 Professions Code who has been hired by the owner or manager of the building if
14 the person has permission pursuant to paragraph (5).

15 (7)(A) A person who, for the purpose of sale or trade, brings any weapon that
16 may otherwise be lawfully transferred, into a gun show conducted pursuant to
17 ~~Sections 12071.1 and 12071.4~~ Article 1 (commencing with Section 27200) and
18 Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4
19 of Part 6.

20 (B) A person who, for purposes of an authorized public exhibition, brings any
21 weapon that may otherwise be lawfully possessed, into a gun show conducted
22 pursuant to ~~Sections 12071.1 and 12071.4~~ Article 1 (commencing with Section
23 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6
24 of Title 4 of Part 6.

25 (c) As used in this section, “state or local public building” means a building that
26 meets all of the following criteria:

27 (1) It is a building or part of a building owned or leased by the state or local
28 government, if state or local public employees are regularly present for the
29 purposes of performing their official duties. A state or local public building
30 includes, but is not limited to, a building that contains a courtroom.

31 (2) It is not a building or facility, or a part thereof, that is referred to in Section
32 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the
33 Elections Code.

34 (3) It is a building not regularly used, and not intended to be used, by state or
35 local employees as a place of residence.

36 **Comment.** Subdivisions (a) and (b) of Section 171b are amended to reflect nonsubstantive
37 reorganization of the statutes governing control of deadly weapons.

38 **Penal Code § 171c (amended). Punishment for bringing or possessing loaded firearm within**
39 **State Capitol and other specified locations**

40 SEC. ____. Section 171c of the Penal Code is amended to read:

41 171c. Any person, except a duly appointed peace officer as defined in Chapter
42 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace

1 officer of another state or the federal government who is carrying out official
2 duties while in California, any person summoned by ~~any such officer~~ one of those
3 officers to assist in making arrests or preserving the peace while ~~he is~~ actually
4 engaged in assisting ~~such~~ that officer, a member of the military forces of this state
5 or the United States engaged in the performance of ~~his~~ duties, or a person holding
6 a valid license to carry the firearm pursuant to ~~Article 3 (commencing with~~
7 ~~Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4 (commencing with
8 Section 26150) of Division 5 of Title 4 of Part 6, who brings a loaded firearm into,
9 or possesses a loaded firearm within, the State Capitol, any legislative office, any
10 office of the Governor or other constitutional officer, or any hearing room in
11 which any committee of the Senate or Assembly is conducting a hearing, or upon
12 the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets
13 in the City of Sacramento, shall be punished by imprisonment in the county jail for
14 a period of not more than one year, a fine of not more than one thousand dollars
15 (\$1,000), or both ~~such~~ that imprisonment and fine, or by imprisonment in the state
16 prison.

17 **Comment.** Section 171c is amended to reflect nonsubstantive reorganization of the statutes
18 governing control of deadly weapons. The section is also amended to make it gender neutral and
19 to make other technical revisions.

20 **Penal Code § 171d (amended). Punishment for bringing or possessing loaded firearm within**
21 **Governor's Mansion and other specified locations**

22 SEC. ____ . Section 171d of the Penal Code is amended to read:

23 171d. Any person, except a duly appointed peace officer as defined in Chapter
24 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace
25 officer of another state or the federal government who is carrying out official
26 duties while in California, any person summoned by that officer to assist in
27 making arrests or preserving the peace while he or she is actually engaged in
28 assisting the officer, a member of the military forces of this state or of the United
29 States engaged in the performance of his or her duties, a person holding a valid
30 license to carry the firearm pursuant to ~~Article 3 (commencing with Section~~
31 ~~12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4 (commencing with Section
32 26150) of Division 5 of Title 4 of Part 6, the Governor or a member of his or her
33 immediate family or a person acting with his or her permission with respect to the
34 Governor's Mansion or any other residence of the Governor, any other
35 constitutional officer or a member of his or her immediate family or a person
36 acting with his or her permission with respect to the officer's residence, or a
37 Member of the Legislature or a member of his or her immediate family or a person
38 acting with his or her permission with respect to the Member's residence, shall be
39 punished by imprisonment in a county jail for not more than one year, by fine of
40 not more than one thousand dollars (\$1,000), or by both the fine and
41 imprisonment, or by imprisonment in the state prison, if he or she does any of the
42 following:

1 (a) Brings a loaded firearm into, or possesses a loaded firearm within, the
2 Governor’s Mansion, or any other residence of the Governor, the residence of any
3 other constitutional officer, or the residence of any Member of the Legislature.

4 (b) Brings a loaded firearm upon, or possesses a loaded firearm upon, the
5 grounds of the Governor’s Mansion or any other residence of the Governor, the
6 residence of any other constitutional officer, or the residence of any Member of
7 the Legislature.

8 **Comment.** Section 171d is amended to reflect nonsubstantive reorganization of the statutes
9 governing control of deadly weapons.

10 **Penal Code § 171.5 (amended). Items prohibited in airports and passenger terminals**

11 SEC. ____ . Section 171.5 of the Penal Code is amended to read:

12 171.5. (a) For purposes of this section:

13 (1) “Airport” means an airport, with a secured area, that regularly serves an air
14 carrier holding a certificate issued by the United States Secretary of
15 Transportation.

16 (2) “Passenger vessel terminal” means only that portion of a harbor or port
17 facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal
18 Regulations, with a secured area that regularly serves scheduled commuter or
19 passenger operations.

20 (3) “Sterile area” means a portion of an airport defined in the airport security
21 program to which access generally is controlled through the screening of persons
22 and property, as specified in Section 1540.5 of Title 49 of the Code of Federal
23 Regulations, or a portion of any passenger vessel terminal to which, pursuant to
24 the requirements set forth in Sections 105.255(a)(1), 105.255(c)(1), and
25 105.260(a) of Title 33 of the Code of Federal Regulations, access is generally
26 controlled in a manner consistent with the passenger vessel terminal’s security
27 plan and the MARSEC level in effect at the time.

28 (b) It is unlawful for any person to knowingly possess, within any sterile area of
29 an airport or a passenger vessel terminal, any of the items listed in subdivision (c).

30 (c) The following items are unlawful to possess as provided in subdivision (b):

31 (1) Any firearm.

32 (2) Any knife with a blade length in excess of four inches, the blade of which is
33 fixed, or is capable of being fixed, in an unguarded position by the use of one or
34 two hands.

35 (3) Any box cutter or straight razor.

36 (4) Any metal military practice hand grenade.

37 (5) Any metal replica hand grenade.

38 (6) Any plastic replica hand grenade.

39 (7) Any imitation firearm as defined in Section 417.4.

40 (8) Any frame, receiver, barrel, or magazine of a firearm.

41 (9) Any unauthorized tear gas weapon.

42 (10) Any taser or stun gun, as defined in Section 244.5.

1 (11) Any instrument that expels a metallic projectile, such as a BB or pellet,
2 through the force of air pressure, CO2 pressure, or spring action, or any spot
3 marker gun or paint gun.

4 (12) Any ammunition as defined in Section 12316 16150.

5 (d) Subdivision (b) shall not apply to, or affect, any of the following:

6 (1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with
7 Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry
8 concealed weapons as described in ~~subdivision (a) of Section 12027~~ Article 2
9 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6,
10 a full-time paid peace officer of another state or the federal government who is
11 carrying out official duties while in California, or any person summoned by any of
12 these officers to assist in making arrests or preserving the peace while he or she is
13 actually engaged in assisting the officer.

14 (2) A person who has authorization to possess a weapon specified in subdivision
15 (c), granted in writing by an airport security coordinator who is designated as
16 specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and
17 who is responsible for the security of the airport.

18 (3) A person, including an employee of a licensed contract guard service, who
19 has authorization to possess a weapon specified in subdivision (c) granted in
20 writing by a person discharging the duties of Facility Security Officer or Company
21 Security Officer pursuant to an approved United States Coast Guard facility
22 security plan, and who is responsible for the security of the passenger vessel
23 terminal.

24 (e) A violation of this section is punishable by imprisonment in a county jail for
25 a period not exceeding six months, or by a fine not exceeding one thousand dollars
26 (\$1,000), or by both that fine and imprisonment.

27 (f) The provisions of this section are cumulative, and shall not be construed as
28 restricting the application of any other law. However, an act or omission that is
29 punishable in different ways by this and any other provision of law shall not be
30 punished under more than one provision.

31 (g) Nothing in this section is intended to affect existing state or federal law
32 regarding the transportation of firearms on airplanes in checked luggage, or the
33 possession of the items listed in subdivision (c) in areas that are not “sterile areas.”

34 **Comment.** Subdivisions (c) and (d) of Section 171.5 are amended to reflect nonsubstantive
35 reorganization of the statutes governing control of deadly weapons.

36 **Penal Code § 186.22 (amended). Promotion, furtherance, or assistance in felonious conduct**
37 **by gang member**

38 SEC. ____. Section 186.22 of the Penal Code is amended to read:

39 186.22. (a) Any person who actively participates in any criminal street gang
40 with knowledge that its members engage in or have engaged in a pattern of
41 criminal gang activity, and who willfully promotes, furthers, or assists in any
42 felonious criminal conduct by members of that gang, shall be punished by

1 imprisonment in a county jail for a period not to exceed one year, or by
2 imprisonment in the state prison for 16 months, or two or three years.

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

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

12 (B) If the felony is a serious felony, as defined in subdivision (c) of Section
13 1192.7, the person shall be punished by an additional term of five years.

14 (C) If the felony is a violent felony, as defined in subdivision (c) of Section
15 667.5, the person shall be punished by an additional term of 10 years.

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

21 (3) The court shall order the imposition of the middle term of the sentence
22 enhancement, unless there are circumstances in aggravation or mitigation. The
23 court shall state the reasons for its choice of sentencing enhancements on the
24 record at the time of the sentencing.

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

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

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

40 (C) Imprisonment in the state prison for seven years, if the felony is extortion, as
41 defined in Section 519; or threats to victims and witnesses, as defined in Section
42 136.1.

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

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

10 (d) Any person who is convicted of a public offense punishable as a felony or a
11 misdemeanor, which is committed for the benefit of, at the direction of or in
12 association with, any criminal street gang with the specific intent to promote,
13 further, or assist in any criminal conduct by gang members, shall be punished by
14 imprisonment in the county jail not to exceed one year, or by imprisonment in the
15 state prison for one, two, or three years, provided that any person sentenced to
16 imprisonment in the county jail shall be imprisoned for a period not to exceed one
17 year, but not less than 180 days, and shall not be eligible for release upon
18 completion of sentence, parole, or any other basis, until he or she has served 180
19 days. If the court grants probation or suspends the execution of sentence imposed
20 upon the defendant, it shall require as a condition thereof that the defendant serve
21 180 days in a county jail.

22 (e) As used in this chapter, “pattern of criminal gang activity” means the
23 commission of, attempted commission of, conspiracy to commit, or solicitation of,
24 sustained juvenile petition for, or conviction of two or more of the following
25 offenses, provided at least one of these offenses occurred after the effective date of
26 this chapter and the last of those offenses occurred within three years after a prior
27 offense, and the offenses were committed on separate occasions, or by two or
28 more persons:

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

31 (2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8
32 of Part 1.

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

35 (4) The sale, possession for sale, transportation, manufacture, offer for sale, or
36 offer to manufacture controlled substances as defined in Sections 11054, 11055,
37 11056, 11057, and 11058 of the Health and Safety Code.

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

40 (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as
41 defined in subdivisions (a) and (b) of Section ~~12034~~ 26100.

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

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

- 1 (9) Grand theft, as defined in subdivision (a) or (c) of Section 487.
- 2 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 3 (11) Burglary, as defined in Section 459.
- 4 (12) Rape, as defined in Section 261.
- 5 (13) Looting, as defined in Section 463.
- 6 (14) Money laundering, as defined in Section 186.10.
- 7 (15) Kidnapping, as defined in Section 207.
- 8 (16) Mayhem, as defined in Section 203.
- 9 (17) Aggravated mayhem, as defined in Section 205.
- 10 (18) Torture, as defined in Section 206.
- 11 (19) Felony extortion, as defined in Sections 518 and 520.
- 12 (20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section
- 13 594.
- 14 (21) Carjacking, as defined in Section 215.
- 15 (22) The sale, delivery, or transfer of a firearm, as defined in ~~Section 12072~~
- 16 Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4
- 17 of Part 6.
- 18 (23) Possession of a pistol, revolver, or other firearm capable of being concealed
- 19 upon the person in violation of ~~paragraph (1) of subdivision (a) of Section 12101~~
- 20 Section 29610.
- 21 (24) Threats to commit crimes resulting in death or great bodily injury, as
- 22 defined in Section 422.
- 23 (25) Theft and unlawful taking or driving of a vehicle, as defined in Section
- 24 10851 of the Vehicle Code.
- 25 (26) Felony theft of an access card or account information, as defined in Section
- 26 484e.
- 27 (27) Counterfeiting, designing, using, attempting to use an access card, as
- 28 defined in Section 484f.
- 29 (28) Felony fraudulent use of an access card or account information, as defined
- 30 in Section 484g.
- 31 (29) Unlawful use of personal identifying information to obtain credit, goods,
- 32 services, or medical information, as defined in Section 530.5.
- 33 (30) Wrongfully obtaining Department of Motor Vehicles documentation, as
- 34 defined in Section 529.7.
- 35 (31) Prohibited possession of a firearm in violation of ~~Section 12024~~ Chapter 2
- 36 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.
- 37 (32) Carrying a concealed firearm in violation of Section ~~12025~~ 25400.
- 38 (33) Carrying a loaded firearm in violation of Section ~~12031~~ 25850.
- 39 (f) As used in this chapter, “criminal street gang” means any ongoing
- 40 organization, association, or group of three or more persons, whether formal or
- 41 informal, having as one of its primary activities the commission of one or more of
- 42 the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
- 43 inclusive, of subdivision (e), having a common name or common identifying sign

1 or symbol, and whose members individually or collectively engage in or have
2 engaged in a pattern of criminal gang activity.

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

9 (h) Notwithstanding any other provision of law, for each person committed to
10 the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or
11 (b) of this section, the offense shall be deemed one for which the state shall pay
12 the rate of 100 percent of the per capita institutional cost of the Division of
13 Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

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

19 (j) A pattern of gang activity may be shown by the commission of one or more
20 of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision
21 (e), and the commission of one or more of the offenses enumerated in paragraphs
22 (1) to (25), inclusive, or (31) to (33), inclusive of subdivision (e). A pattern of
23 gang activity cannot be established solely by proof of commission of offenses
24 enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

25 **Comment.** Subdivision (e) of Section 186.22 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 For guidance in applying this section, see Section 16015 (determining existence of prior
28 conviction).

29 **Penal Code § 186.22a (amended). Building or place where gang commits offense**

30 SEC. _____. Section 186.22a of the Penal Code is amended to read:

31 186.22a. (a) Every building or place used by members of a criminal street gang
32 for the purpose of the commission of the offenses listed in subdivision (e) of
33 Section 186.22 or any offense involving dangerous or deadly weapons, burglary,
34 or rape, and every building or place wherein or upon which that criminal conduct
35 by gang members takes place, is a nuisance which shall be enjoined, abated, and
36 prevented, and for which damages may be recovered, whether it is a public or
37 private nuisance.

38 (b) Any action for injunction or abatement filed pursuant to subdivision (a),
39 including an action filed by the Attorney General, shall proceed according to the
40 provisions of Article 3 (commencing with Section 11570) of Chapter 10 of
41 Division 10 of the Health and Safety Code, except that all of the following shall
42 apply:

1 (1) The court shall not assess a civil penalty against any person unless that
2 person knew or should have known of the unlawful acts.

3 (2) No order of eviction or closure may be entered.

4 (3) All injunctions issued shall be limited to those necessary to protect the health
5 and safety of the residents or the public or those necessary to prevent further
6 criminal activity.

7 (4) Suit may not be filed until 30-day notice of the unlawful use or criminal
8 conduct has been provided to the owner by mail, return receipt requested, postage
9 prepaid, to the last known address.

10 (c) Whenever an injunction is issued pursuant to subdivision (a), or Section
11 3479 of the Civil Code, to abate gang activity constituting a nuisance, the Attorney
12 General or any district attorney or any prosecuting city attorney may maintain an
13 action for money damages on behalf of the community or neighborhood injured by
14 that nuisance. Any money damages awarded shall be paid by or collected from
15 assets of the criminal street gang or its members. Only members of the criminal
16 street gang who created, maintained, or contributed to the creation or maintenance
17 of the nuisance shall be personally liable for the payment of the damages awarded.
18 In a civil action for damages brought pursuant to this subdivision, the Attorney
19 General, district attorney, or city attorney may use, but is not limited to the use of,
20 the testimony of experts to establish damages suffered by the community or
21 neighborhood injured by the nuisance. The damages recovered pursuant to this
22 subdivision shall be deposited into a separate segregated fund for payment to the
23 governing body of the city or county in whose political subdivision the community
24 or neighborhood is located, and that governing body shall use those assets solely
25 for the benefit of the community or neighborhood that has been injured by the
26 nuisance.

27 (d) No nonprofit or charitable organization which is conducting its affairs with
28 ordinary care or skill, and no governmental entity, shall be abated pursuant to
29 subdivisions (a) and (b).

30 (e) Nothing in this chapter shall preclude any aggrieved person from seeking any
31 other remedy provided by law.

32 (f)(1) Any firearm, ammunition which may be used with the firearm, or any
33 deadly or dangerous weapon which is owned or possessed by a member of a
34 criminal street gang for the purpose of the commission of any of the offenses listed
35 in subdivision (e) of Section 186.22, or the commission of any burglary or rape,
36 may be confiscated by any law enforcement agency or peace officer.

37 (2) In those cases where a law enforcement agency believes that the return of the
38 firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is
39 or will be used in criminal street gang activity or that the return of the item would
40 be likely to result in endangering the safety of others, the law enforcement agency
41 shall initiate a petition in the superior court to determine if the item confiscated
42 should be returned or declared a nuisance.

1 (3) No firearm, ammunition, or deadly weapon shall be sold or destroyed unless
2 reasonable notice is given to its lawful owner if his or her identity and address can
3 be reasonably ascertained. The law enforcement agency shall inform the lawful
4 owner, at that person's last known address by registered mail, that he or she has 30
5 days from the date of receipt of the notice to respond to the court clerk to confirm
6 his or her desire for a hearing and that the failure to respond shall result in a
7 default order forfeiting the confiscated firearm, ammunition, or deadly weapon as
8 a nuisance.

9 (4) If the person requests a hearing, the court clerk shall set a hearing no later
10 than 30 days from receipt of that request. The court clerk shall notify the person,
11 the law enforcement agency involved, and the district attorney of the date, time,
12 and place of the hearing.

13 (5) At the hearing, the burden of proof is upon the law enforcement agency or
14 peace officer to show by a preponderance of the evidence that the seized item is or
15 will be used in criminal street gang activity or that return of the item would be
16 likely to result in endangering the safety of others. All returns of firearms shall be
17 subject to ~~Section 12021.3~~ Chapter 2 (commencing with Section 33850) of
18 Division 11 of Title 4 of Part 6.

19 (6) If the person does not request a hearing within 30 days of the notice or the
20 lawful owner cannot be ascertained, the law enforcement agency may file a
21 petition that the confiscated firearm, ammunition, or deadly weapon be declared a
22 nuisance. If the items are declared to be a nuisance, the law enforcement agency
23 shall dispose of the items as provided in ~~Section 12028~~ Sections 18000 and 18005.

24 **Comment.** Subdivision (f) of Section 186.22a is amended to reflect nonsubstantive
25 reorganization of the statutes governing control of deadly weapons.

26 **Penal Code § 189 (amended). First and second degree murder**

27 SEC. ____. Section 189 of the Penal Code is amended to read:

28 189. All murder which is perpetrated by means of a destructive device or
29 explosive, a weapon of mass destruction, knowing use of ammunition designed
30 primarily to penetrate metal or armor, poison, lying in wait, torture, or by any
31 other kind of willful, deliberate, and premeditated killing, or which is committed
32 in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery,
33 burglary, mayhem, kidnapping, train wrecking, or any act punishable under
34 Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means
35 of discharging a firearm from a motor vehicle, intentionally at another person
36 outside of the vehicle with the intent to inflict death, is murder of the first degree.
37 All other kinds of murders are of the second degree.

38 As used in this section, "destructive device" means any destructive device as
39 defined in Section ~~12301~~ 16460, and "explosive" means any explosive as defined
40 in Section 12000 of the Health and Safety Code.

41 As used in this section, "weapon of mass destruction" means any item defined in
42 Section 11417.

1 To prove the killing was “deliberate and premeditated,” it shall not be necessary
2 to prove the defendant maturely and meaningfully reflected upon the gravity of his
3 or her act.

4 **Comment.** Section 189 is amended to reflect nonsubstantive reorganization of the statutes
5 governing control of deadly weapons.

6 **Penal Code § 244.5 (amended). Stun gun or less lethal weapon**

7 SEC. ____ . Section 244.5 of the Penal Code is amended to read:

8 244.5. (a) As used in this section, “stun gun” means any item, except a less
9 lethal weapon, as defined in Section ~~12601~~ 16780, used or intended to be used as
10 either an offensive or defensive weapon that is capable of temporarily
11 immobilizing a person by the infliction of an electrical charge.

12 (b) Every person who commits an assault upon the person of another with a stun
13 gun or less lethal weapon, as defined in Section ~~12601~~ 16780, shall be punished by
14 imprisonment in a county jail for a term not exceeding one year, or by
15 imprisonment in the state prison for 16 months, two, or three years.

16 (c) Every person who commits an assault upon the person of a peace officer or
17 firefighter with a stun gun or less lethal weapon, as defined in Section ~~12601~~
18 16780, who knows or reasonably should know that the person is a peace officer or
19 firefighter engaged in the performance of his or her duties, when the peace officer
20 or firefighter is engaged in the performance of his or her duties, shall be punished
21 by imprisonment in the county jail for a term not exceeding one year, or by
22 imprisonment in the state prison for two, three, or four years.

23 (d) This section shall not be construed to preclude or in any way limit the
24 applicability of Section 245 in any criminal prosecution.

25 **Comment.** Section 244.5 is amended to reflect nonsubstantive reorganization of the statutes
26 governing control of deadly weapons.

27 **Penal Code § 245 (amended). Assault with weapons**

28 SEC. ____ . Section 245 of the Penal Code is amended to read:

29 245. (a)(1) Any person who commits an assault upon the person of another with
30 a deadly weapon or instrument other than a firearm or by any means of force
31 likely to produce great bodily injury shall be punished by imprisonment in the
32 state prison for two, three, or four years, or in a county jail for not exceeding one
33 year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine
34 and imprisonment.

35 (2) Any person who commits an assault upon the person of another with a
36 firearm shall be punished by imprisonment in the state prison for two, three, or
37 four years, or in a county jail for not less than six months and not exceeding one
38 year, or by both a fine not exceeding ten thousand dollars (\$10,000) and
39 imprisonment.

40 (3) Any person who commits an assault upon the person of another with a
41 machinegun, as defined in Section ~~12200~~ 16880, or an assault weapon, as defined

1 in Section ~~12276 or 12276.1~~ 30510 or 30515, or a .50 BMG rifle, as defined in
2 Section ~~12278~~ 30530, shall be punished by imprisonment in the state prison for 4,
3 8, or 12 years.

4 (b) Any person who commits an assault upon the person of another with a
5 semiautomatic firearm shall be punished by imprisonment in the state prison for
6 three, six, or nine years.

7 (c) Any person who commits an assault with a deadly weapon or instrument,
8 other than a firearm, or by any means likely to produce great bodily injury upon
9 the person of a peace officer or firefighter, and who knows or reasonably should
10 know that the victim is a peace officer or firefighter engaged in the performance of
11 his or her duties, when the peace officer or firefighter is engaged in the
12 performance of his or her duties, shall be punished by imprisonment in the state
13 prison for three, four, or five years.

14 (d)(1) Any person who commits an assault with a firearm upon the person of a
15 peace officer or firefighter, and who knows or reasonably should know that the
16 victim is a peace officer or firefighter engaged in the performance of his or her
17 duties, when the peace officer or firefighter is engaged in the performance of his
18 or her duties, shall be punished by imprisonment in the state prison for four, six, or
19 eight years.

20 (2) Any person who commits an assault upon the person of a peace officer or
21 firefighter with a semiautomatic firearm and who knows or reasonably should
22 know that the victim is a peace officer or firefighter engaged in the performance of
23 his or her duties, when the peace officer or firefighter is engaged in the
24 performance of his or her duties, shall be punished by imprisonment in the state
25 prison for five, seven, or nine years.

26 (3) Any person who commits an assault with a machinegun, as defined in
27 Section ~~12200~~ 16880, or an assault weapon, as defined in Section ~~12276 or~~
28 ~~12276.1~~ 30510 or 30515, or a .50 BMG rifle, as defined in Section ~~12278~~ 30530,
29 upon the person of a peace officer or firefighter, and who knows or reasonably
30 should know that the victim is a peace officer or firefighter engaged in the
31 performance of his or her duties, shall be punished by imprisonment in the state
32 prison for 6, 9, or 12 years.

33 (e) When a person is convicted of a violation of this section in a case involving
34 use of a deadly weapon or instrument or firearm, and the weapon or instrument or
35 firearm is owned by that person, the court shall order that the weapon or
36 instrument or firearm be deemed a nuisance, and it shall be confiscated and
37 disposed of in the manner provided by ~~Section 12028~~ Sections 18000 and 18005.

38 (f) As used in this section, “peace officer” refers to any person designated as a
39 peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

40 **Comment.** Section 245 is amended to reflect nonsubstantive reorganization of the statutes
41 governing control of deadly weapons.

1 **Penal Code § 245.3 (amended). Assault with deadly weapon on custodial officer**

2 SEC. ____ . Section 245.3 of the Penal Code is amended to read:

3 245.3. Every person who commits an assault with a deadly weapon or
4 instrument or by any means likely to produce great bodily injury upon the person
5 of a custodial officer as defined in Section 831 or 831.5, and who knows or
6 reasonably should know that ~~such~~ the victim is ~~such~~ a custodial officer engaged in
7 the performance of ~~his~~ duties, shall be punished by imprisonment in the state
8 prison for three, four, or five years.

9 When a person is convicted of a violation of this section in a case involving use
10 of a deadly weapon or instrument, and ~~such~~ that weapon or instrument is owned
11 by ~~such~~ that person, the court may, in its discretion, order that the weapon or
12 instrument be deemed a nuisance and shall be confiscated and destroyed in the
13 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

14 **Comment.** Section 245.3 is amended to reflect nonsubstantive reorganization of the statutes
15 governing control of deadly weapons. The section is also amended to make it gender neutral and
16 to make other technical revisions.

17 **Penal Code § 273.6 (amended). Violation of protective order and other orders**

18 SEC. ____ . Section 273.6 of the Penal Code is amended to read:

19 273.6. (a) Any intentional and knowing violation of a protective order, as
20 defined in Section 6218 of the Family Code, or of an order issued pursuant to
21 Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the
22 Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more
23 than one thousand dollars (\$1,000), or by imprisonment in a county jail for not
24 more than one year, or by both that fine and imprisonment.

25 (b) In the event of a violation of subdivision (a) which results in physical injury,
26 the person shall be punished by a fine of not more than two thousand dollars
27 (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more
28 than one year, or by both that fine and imprisonment. However, if the person is
29 imprisoned in a county jail for at least 48 hours, the court may, in the interest of
30 justice and for reasons stated on the record, reduce or eliminate the 30-day
31 minimum imprisonment required by this subdivision. In determining whether to
32 reduce or eliminate the minimum imprisonment pursuant to this subdivision, the
33 court shall consider the seriousness of the facts before the court, whether there are
34 additional allegations of a violation of the order during the pendency of the case
35 before the court, the probability of future violations, the safety of the victim, and
36 whether the defendant has successfully completed or is making progress with
37 counseling.

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

39 (1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

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

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

3 (4) Any order issued by another state that is recognized under Part 5
4 (commencing with Section 6400) of Division 10 of the Family Code.

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

10 (e) In the event of a subsequent conviction for a violation of an order described
11 in subdivision (a) for an act occurring within one year of a prior conviction for a
12 violation of an order described in subdivision (a) that results in physical injury to a
13 victim, the person shall be punished by a fine of not more than two thousand
14 dollars (\$2,000), or by imprisonment in a county jail for not less than six months
15 nor more than one year, by both that fine and imprisonment, or by imprisonment
16 in the state prison. However, if the person is imprisoned in a county jail for at least
17 30 days, the court may, in the interest of justice and for reasons stated in the
18 record, reduce or eliminate the six-month minimum imprisonment required by this
19 subdivision. In determining whether to reduce or eliminate the minimum
20 imprisonment pursuant to this subdivision, the court shall consider the seriousness
21 of the facts before the court, whether there are additional allegations of a violation
22 of the order during the pendency of the case before the court, the probability of
23 future violations, the safety of the victim, and whether the defendant has
24 successfully completed or is making progress with counseling.

25 (f) The prosecuting agency of each county shall have the primary responsibility
26 for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

27 (g)(1) Every person who owns, possesses, purchases, or receives a firearm
28 knowing he or she is prohibited from doing so by the provisions of a protective
29 order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or
30 Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the
31 Welfare and Institutions Code, shall be punished under the provisions of
32 ~~subdivision (g) of Section 12021~~ Section 29825.

33 (2) Every person subject to a protective order described in paragraph (1) shall
34 not be prosecuted under this section for owning, possessing, purchasing, or
35 receiving a firearm to the extent that firearm is granted an exemption pursuant to
36 subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h)
37 of Section 6389 of the Family Code.

38 (h) If probation is granted upon conviction of a violation of subdivision (a), (b),
39 (c), (d), or (e), the court shall impose probation consistent with the provisions of
40 Section 1203.097, and the conditions of probation may include, in lieu of a fine,
41 one or both of the following requirements:

1 (1) That the defendant make payments to a battered women’s shelter or to a
2 shelter for abused elder persons or dependent adults, up to a maximum of five
3 thousand dollars (\$5,000), pursuant to Section 1203.097.

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

7 (i) For any order to pay a fine, make payments to a battered women’s shelter, or
8 pay restitution as a condition of probation under subdivision (e), the court shall
9 make a determination of the defendant’s ability to pay. In no event shall any order
10 to make payments to a battered women’s shelter be made if it would impair the
11 ability of the defendant to pay direct restitution to the victim or court-ordered child
12 support. Where the injury to a married person is caused in whole or in part by the
13 criminal acts of his or her spouse in violation of this section, the community
14 property may not be used to discharge the liability of the offending spouse for
15 restitution to the injured spouse, required by Section 1203.04, as operative on or
16 before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to
17 the injured spouse and dependents, required by this section, until all separate
18 property of the offending spouse is exhausted.

19 **Comment.** Subdivision (g) of Section 273.6 is amended to reflect nonsubstantive
20 reorganization of the statutes governing control of deadly weapons.

21 **Penal Code § 417.4 (amended). Punishment for drawing or exhibiting imitation firearm**

22 SEC. ____ . Section 417.4 of the Penal Code is amended to read:

23 417.4. Every person who, except in self-defense, draws or exhibits an imitation
24 firearm, as defined in ~~Section 12550~~ subdivision (a) of Section 16700, in a
25 threatening manner against another in such a way as to cause a reasonable person
26 apprehension or fear of bodily harm is guilty of a misdemeanor punishable by
27 imprisonment in a county jail for a term of not less than 30 days.

28 **Comment.** Section 417.4 is amended to reflect nonsubstantive reorganization of the statutes
29 governing control of deadly weapons. The section is also amended to make a technical revision.

30 **Penal Code § 417.6 (amended). Intentional infliction of serious bodily injury by drawing or**
31 **exhibiting firearm or deadly weapon**

32 SEC. ____ . Section 417.6 of the Penal Code is amended to read:

33 417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious
34 bodily injury is intentionally inflicted by the person drawing or exhibiting the
35 firearm or deadly weapon, the offense shall be punished by imprisonment in the
36 county jail not exceeding one year or by imprisonment in the state prison.

37 (b) As used in this section, “serious bodily injury” means a serious impairment
38 of physical condition, including, but not limited to, the following: loss of
39 consciousness; concussion; bone fracture; protracted loss or impairment of
40 function of any bodily member or organ; a wound requiring extensive suturing;
41 and serious disfigurement.

1 (c) When a person is convicted of a violation of Section 417 or 417.8 and the
2 deadly weapon or firearm used by the person is owned by that person, the court
3 shall order that the weapon or firearm be deemed a nuisance and disposed of in the
4 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

5 **Comment.** Subdivision (c) of Section 417.6 is amended to reflect nonsubstantive
6 reorganization of the statutes governing control of deadly weapons.

7 **Penal Code § 626.9 (amended). Gun-Free School Zone Act of 1995**

8 SEC. ____ . Section 626.9 of the Penal Code is amended to read:

9 626.9. (a) This section shall be known, and may be cited, as the Gun-Free
10 School Zone Act of 1995.

11 (b) Any person who possesses a firearm in a place that the person knows, or
12 reasonably should know, is a school zone, as defined in paragraph (1) of
13 subdivision (e), unless it is with the written permission of the school district
14 superintendent, his or her designee, or equivalent school authority, shall be
15 punished as specified in subdivision (f).

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

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

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

24 This section does not prohibit or limit the otherwise lawful transportation of any
25 other firearm, other than a pistol, revolver, or other firearm capable of being
26 concealed on the person, in accordance with state law.

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

36 (4) When the person is exempt from the prohibition against carrying a concealed
37 firearm pursuant to ~~subdivision (b), (d), (e), or (h) of Section 12027~~ Section
38 25615, 25625, 25630, or 25645.

39 (d) Except as provided in subdivision (b), it shall be unlawful for any person,
40 with reckless disregard for the safety of another, to discharge, or attempt to
41 discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision
42 (e).

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

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

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

8 (2) “Firearm” has the same meaning as that term is given in ~~Section 12001~~
9 subdivisions (a) to (d), inclusive, of Section 16520.

10 (3) “Locked container” has the same meaning as that term is given in
11 ~~subdivision (c) of Section 12026.1~~ Section 16850.

12 (4) “Concealed firearm” has the same meaning as that term is given in Sections
13 ~~12025 and 12026.1~~ 25400 and 25610.

14 (f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on
15 the grounds of, a public or private school providing instruction in kindergarten or
16 grades 1 to 12, inclusive, shall be punished by imprisonment in the state prison for
17 two, three, or five years.

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

22 (A) By imprisonment in the state prison for two, three, or five years, if any of
23 the following circumstances apply:

24 (i) If the person previously has been convicted of any felony, or of any crime
25 made punishable by ~~Chapter 1 (commencing with Section 12000) of Title 2 of~~
26 ~~Part 4~~ any provision listed in Section 16580.

27 (ii) If the person is within a class of persons prohibited from possessing or
28 acquiring a firearm pursuant to ~~Section 12021 or 12021.1~~ Chapter 2 (commencing
29 with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9
30 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and
31 Institutions Code.

32 (iii) If the firearm is any pistol, revolver, or other firearm capable of being
33 concealed upon the person and the offense is punished as a felony pursuant to
34 ~~Section 12025~~ 25400.

35 (B) By imprisonment in a county jail for not more than one year or by
36 imprisonment in the state prison for two, three, or five years, in all cases other than
37 those specified in subparagraph (A).

38 (3) Any person who violates subdivision (d) shall be punished by imprisonment
39 in the state prison for three, five, or seven years.

40 (g)(1) Every person convicted under this section for a misdemeanor violation of
41 subdivision (b) who has been convicted previously of a misdemeanor offense
42 enumerated in ~~Section 12001.6~~ 23515 shall be punished by imprisonment in a
43 county jail for not less than three months, or if probation is granted or if the

1 execution or imposition of sentence is suspended, it shall be a condition thereof
2 that he or she be imprisoned in a county jail for not less than three months.

3 (2) Every person convicted under this section of a felony violation of
4 subdivision (b) or (d) who has been convicted previously of a misdemeanor
5 offense enumerated in Section ~~12001.6~~ 23515, if probation is granted or if the
6 execution of sentence is suspended, it shall be a condition thereof that he or she be
7 imprisoned in a county jail for not less than three months.

8 (3) Every person convicted under this section for a felony violation of
9 subdivision (b) or (d) who has been convicted previously of any felony, or of any
10 crime made punishable by ~~Chapter 1 (commencing with Section 12000) of Title 2~~
11 of Part 4 any provision listed in Section 16580, if probation is granted or if the
12 execution or imposition of sentence is suspended, it shall be a condition thereof
13 that he or she be imprisoned in a county jail for not less than three months.

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

22 (h) Notwithstanding Section ~~12026~~ 25605, any person who brings or possesses a
23 loaded firearm upon the grounds of a campus of, or buildings owned or operated
24 for student housing, teaching, research, or administration by, a public or private
25 university or college, that are contiguous or are clearly marked university
26 property, unless it is with the written permission of the university or college
27 president, his or her designee, or equivalent university or college authority, shall
28 be punished by imprisonment in the state prison for two, three, or four years.
29 Notwithstanding subdivision (k), a university or college shall post a prominent
30 notice at primary entrances on noncontiguous property stating that firearms are
31 prohibited on that property pursuant to this subdivision.

32 (i) Notwithstanding Section ~~12026~~ 25605, any person who brings or possesses a
33 firearm upon the grounds of a campus of, or buildings owned or operated for
34 student housing, teaching, research, or administration by, a public or private
35 university or college, that are contiguous or are clearly marked university
36 property, unless it is with the written permission of the university or college
37 president, his or her designee, or equivalent university or college authority, shall
38 be punished by imprisonment in the state prison for one, two, or three years.
39 Notwithstanding subdivision (k), a university or college shall post a prominent
40 notice at primary entrances on noncontiguous property stating that firearms are
41 prohibited on that property pursuant to this subdivision.

42 (j) For purposes of this section, a firearm shall be deemed to be loaded when
43 there is an unexpended cartridge or shell, consisting of a case that holds a charge

1 of powder and a bullet or shot, in, or attached in any manner to, the firearm,
2 including, but not limited to, in the firing chamber, magazine, or clip thereof
3 attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded
4 when it is capped or primed and has a powder charge and ball or shot in the barrel
5 or cylinder.

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

8 (l) This section does not apply to a duly appointed peace officer as defined in
9 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid
10 peace officer of another state or the federal government who is carrying out
11 official duties while in California, any person summoned by any of these officers
12 to assist in making arrests or preserving the peace while he or she is actually
13 engaged in assisting the officer, a member of the military forces of this state or of
14 the United States who is engaged in the performance of his or her duties, a person
15 holding a valid license to carry the firearm pursuant to ~~Article 3 (commencing~~
16 ~~with Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4 (commencing with
17 Section 26150) of Division 5 of Title 4 of Part 6, or an armored vehicle guard,
18 engaged in the performance of his or her duties, as defined in subdivision (e) of
19 Section 7521 of the Business and Professions Code.

20 (m) This section does not apply to a security guard authorized to carry a loaded
21 firearm pursuant to ~~Section 12031~~ Article 4 (commencing with Section 26000) of
22 Chapter 3 of Division 5 of Title 4 of Part 6.

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

25 (o) This section does not apply to an honorably retired peace officer authorized
26 to carry a concealed or loaded firearm pursuant to ~~subdivision (a) or (i) of Section~~
27 ~~12027 or paragraph (1) or (8) of subdivision (b) of Section 12031~~ any of the
28 following:

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

31 (2) Section 25650.

32 (3) Sections 25900 to 25910, inclusive.

33 (4) Section 26020.

34 **Comment.** Section 626.9 is amended to reflect nonsubstantive reorganization of the statutes
35 governing control of deadly weapons.

36 Subdivision (c) is amended to make a technical revision.

37 For guidance in applying this section, see Section 16015 (determining existence of prior
38 conviction).

39 **Penal Code § 626.95 (amended). Firearm at playground or youth center**

40 SEC. ____ . Section 626.95 of the Penal Code is amended to read:

41 626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or
42 subdivision (b), of Section 417, or Section ~~12025 or 12031~~ 25400 or 25850, upon
43 the grounds of or within a playground, or a public or private youth center during

1 hours in which the facility is open for business, classes, or school-related
2 programs, or at any time when minors are using the facility, knowing that he or
3 she is on or within those grounds, shall be punished by imprisonment in the state
4 prison for one, two, or three years, or in a county jail not exceeding one year.

5 (b) State and local authorities are encouraged to cause signs to be posted around
6 playgrounds and youth centers giving warning of prohibition of the possession of
7 firearms upon the grounds of or within playgrounds or youth centers.

8 (c) For purposes of this section, the following definitions shall apply:

9 (1) "Playground" means any park or recreational area specifically designed to be
10 used by children that has play equipment installed, including public grounds
11 designed for athletic activities such as baseball, football, soccer, or basketball, or
12 any similar facility located on public or private school grounds, or on city or
13 county parks.

14 (2) "Youth center" means any public or private facility that is used to host
15 recreational or social activities for minors while minors are present.

16 (d) It is the Legislature's intent that only an actual conviction of a felony of one
17 of the offenses specified in this section would subject the person to firearms
18 disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C.
19 Sec. 921).

20 **Comment.** Subdivision (a) of Section 626.95 is amended to reflect nonsubstantive
21 reorganization of the statutes governing control of deadly weapons.

22 **Penal Code § 626.10 (amended). Bringing or possessing weapons on school grounds**

23 SEC. ____. Section 626.10 of the Penal Code is amended to read:

24 626.10. (a) Any person, except a duly appointed peace officer as defined in
25 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid
26 peace officer of another state or the federal government who is carrying out
27 official duties while in this state, a person summoned by any officer to assist in
28 making arrests or preserving the peace while the person is actually engaged in
29 assisting any officer, or a member of the military forces of this state or the United
30 States who is engaged in the performance of his or her duties, who brings or
31 possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches,
32 folding knife with a blade that locks into place, a razor with an unguarded blade, a
33 taser, or a stun gun, as defined in subdivision (a) of Section 244.5, any instrument
34 that expels a metallic projectile such as a BB or a pellet, through the force of air
35 pressure, CO₂ pressure, or spring action, or any spot marker gun, upon the grounds
36 of, or within, any public or private school providing instruction in kindergarten or
37 any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by
38 imprisonment in a county jail not exceeding one year, or by imprisonment in the
39 state prison.

40 (b) Any person, except a duly appointed peace officer as defined in Chapter 4.5
41 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer
42 of another state or the federal government who is carrying out official duties while

1 in this state, a person summoned by any officer to assist in making arrests or
2 preserving the peace while the person is actually engaged in assisting any officer,
3 or a member of the military forces of this state or the United States who is engaged
4 in the performance of his or her duties, who brings or possesses any dirk, dagger,
5 ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of,
6 or within, any private university, the University of California, the California State
7 University, or the California Community Colleges is guilty of a public offense,
8 punishable by imprisonment in a county jail not exceeding one year, or by
9 imprisonment in the state prison.

10 (c) Subdivisions (a) and (b) do not apply to any person who brings or possesses
11 a knife having a blade longer than 2½ inches or a razor with an unguarded blade
12 upon the grounds of, or within, a public or private school providing instruction in
13 kindergarten or any of grades 1 to 12, inclusive, or any private university, state
14 university, or community college at the direction of a faculty member of the
15 private university, state university, or community college, or a certificated or
16 classified employee of the school for use in a private university, state university,
17 community college, or school-sponsored activity or class.

18 (d) Subdivisions (a) and (b) do not apply to any person who brings or possesses
19 an ice pick, a knife having a blade longer than 2½ inches, or a razor with an
20 unguarded blade upon the grounds of, or within, a public or private school
21 providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any
22 private university, state university, or community college for a lawful purpose
23 within the scope of the person's employment.

24 (e) Subdivision (b) does not apply to any person who brings or possesses an ice
25 pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or
26 within, any private university, state university, or community college for lawful
27 use in or around a residence or residential facility located upon those grounds or
28 for lawful use in food preparation or consumption.

29 (f) Subdivision (a) does not apply to any person who brings an instrument that
30 expels a metallic projectile such as a BB or a pellet, through the force of air
31 pressure, CO₂ pressure, or spring action, or any spot marker gun upon the grounds
32 of, or within, a public or private school providing instruction in kindergarten or
33 any of grades 1 to 12, inclusive, if the person has the written permission of the
34 school principal or his or her designee.

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

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

4 (i) Any person who, without the written permission of the college or university
5 president or chancellor or his or her designee, brings or possesses a less lethal
6 weapon, as defined in Section ~~12604~~ 16780, or a stun gun, as defined in Section
7 ~~12650~~ 17230, upon the grounds of or within, a public or private college or
8 university campus is guilty of a misdemeanor.

9 **Comment.** Subdivision (i) of Section 626.10 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Penal Code § 629.52 (amended). Ex parte order authorizing interception of specified**
12 **communications**

13 SEC. ____ . Section 629.52 of the Penal Code is amended to read:

14 629.52. Upon application made under Section 629.50, the judge may enter an ex
15 parte order, as requested or modified, authorizing interception of wire, electronic
16 pager, or electronic cellular telephone communications initially intercepted within
17 the territorial jurisdiction of the court in which the judge is sitting, if the judge
18 determines, on the basis of the facts submitted by the applicant, all of the
19 following:

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

22 (1) Importation, possession for sale, transportation, manufacture, or sale of
23 controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6,
24 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with
25 respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their
26 precursors or analogs where the substance exceeds 10 gallons by liquid volume or
27 three pounds of solid substance by weight.

28 (2) Murder, solicitation to commit murder, the commission of a felony involving
29 a destructive device in violation of Section ~~12303, 12303.1, 12303.2, 12303.3,~~
30 ~~12303.6, 12308, 12309, 12310, or 12312~~ 18710, 18715, 18720, 18725, 18730,
31 18740, 18745, 18750, or 18755, or a violation of Section 209.

32 (3) Any felony violation of Section 186.22.

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

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

37 (b) There is probable cause to believe that particular communications
38 concerning the illegal activities will be obtained through that interception,
39 including, but not limited to, communications that may be utilized for locating or
40 rescuing a kidnap victim.

41 (c) There is probable cause to believe that the facilities from which, or the place
42 where, the wire, electronic pager, or electronic cellular telephone communications

1 are to be intercepted are being used, or are about to be used, in connection with the
2 commission of the offense, or are leased to, listed in the name of, or commonly
3 used by the person whose communications are to be intercepted.

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

6 **Comment.** Subdivision (a) of Section 629.52 is amended to reflect nonsubstantive
7 reorganization of the statutes governing control of deadly weapons.

8 **Penal Code § 667.5 (amended). Enhancement for prior prison terms**

9 SEC. _____. Section 667.5 of the Penal Code is amended to read:

10 667.5. Enhancement of prison terms for new offenses because of prior prison
11 terms shall be imposed as follows:

12 (a) Where one of the new offenses is one of the violent felonies specified in
13 subdivision (c), in addition to and consecutive to any other prison terms therefor,
14 the court shall impose a three-year term for each prior separate prison term served
15 by the defendant where the prior offense was one of the violent felonies specified
16 in subdivision (c). However, no additional term shall be imposed under this
17 subdivision for any prison term served prior to a period of 10 years in which the
18 defendant remained free of both prison custody and the commission of an offense
19 which results in a felony conviction.

20 (b) Except where subdivision (a) applies, where the new offense is any felony
21 for which a prison sentence is imposed, in addition and consecutive to any other
22 prison terms therefor, the court shall impose a one-year term for each prior
23 separate prison term served for any felony; provided that no additional term shall
24 be imposed under this subdivision for any prison term served prior to a period of
25 five years in which the defendant remained free of both prison custody and the
26 commission of an offense which results in a felony conviction.

27 (c) For the purpose of this section, “violent felony” shall mean any of the
28 following:

29 (1) Murder or voluntary manslaughter.

30 (2) Mayhem.

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

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

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

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

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

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

- 1 (9) Any robbery.
- 2 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 3 (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- 4 (12) Attempted murder.
- 5 (13) A violation of Section ~~12308, 12309, or 12310~~ 18745, 18750, or 18755.
- 6 (14) Kidnapping.
- 7 (15) Assault with the intent to commit a specified felony, in violation of Section
- 8 220.
- 9 (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- 10 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 11 (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section
- 12 264.1.
- 13 (19) Extortion, as defined in Section 518, which would constitute a felony
- 14 violation of Section 186.22 of the Penal Code.
- 15 (20) Threats to victims or witnesses, as defined in Section 136.1, which would
- 16 constitute a felony violation of Section 186.22 of the Penal Code.
- 17 (21) Any burglary of the first degree, as defined in subdivision (a) of Section
- 18 460, wherein it is charged and proved that another person, other than an
- 19 accomplice, was present in the residence during the commission of the burglary.
- 20 (22) Any violation of Section 12022.53.
- 21 (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds
- 22 and declares that these specified crimes merit special consideration when imposing
- 23 a sentence to display society's condemnation for these extraordinary crimes of
- 24 violence against the person.
- 25 (d) For the purposes of this section, the defendant shall be deemed to remain in
- 26 prison custody for an offense until the official discharge from custody or until
- 27 release on parole, whichever first occurs, including any time during which the
- 28 defendant remains subject to reimprisonment for escape from custody or is
- 29 reimprisoned on revocation of parole. The additional penalties provided for prior
- 30 prison terms shall not be imposed unless they are charged and admitted or found
- 31 true in the action for the new offense.
- 32 (e) The additional penalties provided for prior prison terms shall not be imposed
- 33 for any felony for which the defendant did not serve a prior separate term in state
- 34 prison.
- 35 (f) A prior conviction of a felony shall include a conviction in another
- 36 jurisdiction for an offense which, if committed in California, is punishable by
- 37 imprisonment in the state prison if the defendant served one year or more in prison
- 38 for the offense in the other jurisdiction. A prior conviction of a particular felony
- 39 shall include a conviction in another jurisdiction for an offense which includes all
- 40 of the elements of the particular felony as defined under California law if the
- 41 defendant served one year or more in prison for the offense in the other
- 42 jurisdiction.

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

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

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

15 (j) For the purposes of this section, when a person subject to the custody,
16 control, and discipline of the Director of Corrections is incarcerated at a facility
17 operated by the Department of the Youth Authority, that incarceration shall be
18 deemed to be a term served in state prison.

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

25 This subdivision shall not apply when a full, separate, and consecutive term is
26 imposed pursuant to any other provision of law.

27 **Comment.** Subdivision (c) of Section 667.5 is amended to reflect nonsubstantive
28 reorganization of the statutes governing control of deadly weapons.

29 For guidance in applying this section, see Section 16015 (determining existence of prior
30 conviction).

31 **Penal Code § 667.7 (amended). Punishment for habitual offenders**

32 SEC. ____ . Section 667.7 of the Penal Code is amended to read:

33 667.7. (a) Any person convicted of a felony in which the person inflicted great
34 bodily injury as provided in Section 12022.53 or 12022.7, or personally used force
35 which was likely to produce great bodily injury, who has served two or more prior
36 separate prison terms as defined in Section 667.5 for the crime of murder;
37 attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or
38 fear of immediate and unlawful bodily injury on the victim or another person; oral
39 copulation by force, violence, duress, menace, or fear of immediate and unlawful
40 bodily injury on the victim or another person; sodomy by force, violence, duress,
41 menace, or fear of immediate and unlawful bodily injury on the victim or another
42 person; lewd acts on a child under the age of 14 years by use of force, violence,

1 duress, menace, or fear of immediate and unlawful bodily injury on the victim or
2 another person; a violation of subdivision (a) of Section 289 where the act is
3 accomplished against the victim's will by means of force, violence, duress,
4 menace, or fear of immediate and unlawful bodily injury on the victim or another
5 person; kidnapping as punished in former subdivision (d) of Section 208, or for
6 ransom, extortion, or robbery; robbery involving the use of force or a deadly
7 weapon; carjacking involving the use of a deadly weapon; assault with intent to
8 commit murder; assault with a deadly weapon; assault with a force likely to
9 produce great bodily injury; assault with intent to commit rape, sodomy, oral
10 copulation, sexual penetration in violation of Section 289, or lewd and lascivious
11 acts on a child; arson of a structure; escape or attempted escape by an inmate with
12 force or violence in violation of subdivision (a) of Section 4530, or of Section
13 4532; exploding a destructive device with intent to murder in violation of Section
14 ~~12308~~ 18745; exploding a destructive device which causes bodily injury in
15 violation of Section ~~12309~~ 18750, or mayhem or great bodily injury in violation of
16 Section ~~12310~~ 18755; exploding a destructive device with intent to injure,
17 intimidate, or terrify, in violation of Section ~~12303.3~~ 18740; any felony in which
18 the person inflicted great bodily injury as provided in Section 12022.53 or
19 12022.7; or any felony punishable by death or life imprisonment with or without
20 the possibility of parole is a habitual offender and shall be punished as follows:

21 (1) A person who served two prior separate prison terms shall be punished by
22 imprisonment in the state prison for life and shall not be eligible for release on
23 parole for 20 years, or the term determined by the court pursuant to Section 1170
24 for the underlying conviction, including any enhancement applicable under
25 Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period
26 prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing
27 with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any
28 minimum term in a state prison imposed pursuant to this section, but the person
29 shall not otherwise be released on parole prior to that time.

30 (2) Any person convicted of a felony specified in this subdivision who has
31 served three or more prior separate prison terms, as defined in Section 667.5, for
32 the crimes specified in subdivision (a) of this section shall be punished by
33 imprisonment in the state prison for life without the possibility of parole.

34 (b) This section shall not prevent the imposition of the punishment of death or
35 imprisonment for life without the possibility of parole. No prior prison term shall
36 be used for this determination which was served prior to a period of 10 years in
37 which the person remained free of both prison custody and the commission of an
38 offense which results in a felony conviction. As used in this section, a
39 commitment to the Department of the Youth Authority after conviction for a
40 felony shall constitute a prior prison term. The term imposed under this section
41 shall be imposed only if the prior prison terms are alleged under this section in the
42 accusatory pleading, and either admitted by the defendant in open court, or found
43 to be true by the jury trying the issue of guilt or by the court where guilt is

1 established by a plea of guilty or nolo contendere or by a trial by the court sitting
2 without a jury.

3 **Comment.** Subdivision (a) of Section 667.7 is amended to reflect nonsubstantive
4 reorganization of the statutes governing control of deadly weapons.

5 For guidance in applying this section, see Section 16015 (determining existence of prior
6 conviction).

7 **Penal Code § 679.03 (amended). Notice of release, escape, scheduled execution, or death of**
8 **specified violent offender**

9 SEC. _____. Section 679.03 of the Penal Code is amended to read:

10 679.03. (a) With respect to the conviction of a defendant involving a violent
11 offense, as defined in ~~subdivision (b) of Section 12021.1~~ Section 29905, the
12 county district attorney, probation department, and victim-witness coordinator
13 shall confer and establish an annual policy within existing resources to decide
14 which one of their agencies shall inform each witness involved in the conviction
15 who was threatened by the defendant following the defendant's arrest and each
16 victim or next of kin of the victim of that offense of the right to request and
17 receive a notice pursuant to Section 3058.8 or 3605. If no agreement is reached,
18 the presiding judge shall designate the appropriate county agency or department to
19 provide this notification.

20 (b) The Department of Corrections shall supply a form to the agency designated
21 pursuant to subdivision (a) in order to enable persons specified in subdivision (a)
22 to request and receive notification from the department of the release, escape,
23 scheduled execution, or death of the violent offender. That agency shall give the
24 form to the victim, witness, or next of kin of the victim for completion, explain to
25 that person or persons the right to be so notified, and forward the completed form
26 to the department. The department or the Board of Prison Terms is responsible for
27 notifying all victims, witnesses, or next of kin of victims who request to be
28 notified of a violent offender's release or scheduled execution, as provided by
29 Sections 3058.8 and 3605.

30 (c) All information relating to any person receiving notice pursuant to
31 subdivision (b) shall remain confidential and is not subject to disclosure pursuant
32 to the California Public Records Act (Chapter 3.5 (commencing with Section
33 6250) of Title 7 of Division 1 of the Government Code).

34 **Comment.** Subdivision (a) of Section 679.03 is amended to reflect nonsubstantive
35 reorganization of the statutes governing control of deadly weapons.

36 **Penal Code § 830.5 (amended). Authority of peace officers to carry firearms**

37 SEC. _____. Section 830.5 of the Penal Code is amended to read:

38 830.5. The following persons are peace officers whose authority extends to any
39 place in the state while engaged in the performance of the duties of their respective
40 employment and for the purpose of carrying out the primary function of their
41 employment or as required under Sections 8597, 8598, and 8617 of the
42 Government Code. Except as specified in this section, these peace officers may

1 carry firearms only if authorized and under those terms and conditions specified
2 by their employing agency:

3 (a) A parole officer of the Department of Corrections or the Department of the
4 Youth Authority, probation officer, deputy probation officer, or a board
5 coordinating parole agent employed by the Youthful Offender Parole Board.
6 Except as otherwise provided in this subdivision, the authority of these parole or
7 probation officers shall extend only as follows:

8 (1) To conditions of parole or of probation by any person in this state on parole
9 or probation.

10 (2) To the escape of any inmate or ward from a state or local institution.

11 (3) To the transportation of persons on parole or probation.

12 (4) To violations of any penal provisions of law which are discovered while
13 performing the usual or authorized duties of his or her employment.

14 (5) To the rendering of mutual aid to any other law enforcement agency.

15 For the purposes of this subdivision, “parole agent” shall have the same meaning
16 as parole officer of the Department of Corrections or of the Department of the
17 Youth Authority.

18 Any parole officer of the Department of Corrections, the Department of the
19 Youth Authority, or the Youthful Offender Parole Board is authorized to carry
20 firearms, but only as determined by the director on a case-by-case or unit-by-unit
21 basis and only under those terms and conditions specified by the director or
22 chairperson. The Department of the Youth Authority shall develop a policy for
23 arming peace officers of the Department of the Youth Authority who comprise
24 “high-risk transportation details” or “high-risk escape details” no later than June
25 30, 1995. This policy shall be implemented no later than December 31, 1995.

26 The Department of the Youth Authority shall train and arm those peace officers
27 who comprise tactical teams at each facility for use during “high-risk escape
28 details.”

29 (b) A correctional officer employed by the Department of Corrections or any
30 employee of the Department of the Youth Authority having custody of wards or
31 the Inspector General of the Youth and Adult Correctional Agency or any internal
32 affairs investigator under the authority of the Inspector General or any employee
33 of the Department of Corrections designated by the Director of Corrections or any
34 correctional counselor series employee of the Department of Corrections or any
35 medical technical assistant series employee designated by the Director of
36 Corrections or designated by the Director of Corrections and employed by the
37 State Department of Mental Health or employee of the Board of Prison Terms
38 designated by the Secretary of the Youth and Adult Correctional Agency or
39 employee of the Department of the Youth Authority designated by the Director of
40 the Youth Authority or any superintendent, supervisor, or employee having
41 custodial responsibilities in an institution operated by a probation department, or
42 any transportation officer of a probation department.

1 (c) The following persons may carry a firearm while not on duty: a parole
2 officer of the Department of Corrections or the Department of the Youth
3 Authority, a correctional officer or correctional counselor employed by the
4 Department of Corrections or any employee of the Department of the Youth
5 Authority having custody of wards or any employee of the Department of
6 Corrections designated by the Director of Corrections. A parole officer of the
7 Youthful Offender Parole Board may carry a firearm while not on duty only when
8 so authorized by the chairperson of the board and only under the terms and
9 conditions specified by the chairperson. Nothing in this section shall be interpreted
10 to require licensure pursuant to Section ~~42025~~ 25400. The director or chairperson
11 may deny, suspend, or revoke for good cause a person's right to carry a firearm
12 under this subdivision. That person shall, upon request, receive a hearing, as
13 provided for in the negotiated grievance procedure between the exclusive
14 employee representative and the Department of Corrections, the Department of the
15 Youth Authority, or the Youthful Offender Parole Board, to review the director's
16 or the chairperson's decision.

17 (d) Persons permitted to carry firearms pursuant to this section, either on or off
18 duty, shall meet the training requirements of Section 832 and shall qualify with the
19 firearm at least quarterly. It is the responsibility of the individual officer or
20 designee to maintain his or her eligibility to carry concealable firearms off duty.
21 Failure to maintain quarterly qualifications by an officer or designee with any
22 concealable firearms carried off duty shall constitute good cause to suspend or
23 revoke that person's right to carry firearms off duty.

24 (e) The Department of Corrections shall allow reasonable access to its ranges for
25 officers and designees of either department to qualify to carry concealable
26 firearms off duty. The time spent on the range for purposes of meeting the
27 qualification requirements shall be the person's own time during the person's off-
28 duty hours.

29 (f) The Director of Corrections shall promulgate regulations consistent with this
30 section.

31 (g) "High-risk transportation details" and "high-risk escape details" as used in
32 this section shall be determined by the Director of the Youth Authority, or his or
33 her designee. The director, or his or her designee, shall consider at least the
34 following in determining "high-risk transportation details" and "high-risk escape
35 details": protection of the public, protection of officers, flight risk, and violence
36 potential of the wards.

37 (h) "Transportation detail" as used in this section shall include transportation of
38 wards outside the facility, including, but not limited to, court appearances, medical
39 trips, and interfacility transfers.

40 **Comment.** Subdivision (c) of Section 830.5 is amended to reflect nonsubstantive
41 reorganization of the statutes governing control of deadly weapons.

1 **Penal Code § 830.8 (amended). Federal employees and Washoe tribal law enforcement**
2 **officers**

3 SEC. ____ . Section 830.8 of the Penal Code is amended to read:

4 830.8. (a) Federal criminal investigators and law enforcement officers are not
5 California peace officers, but may exercise the powers of arrest of a peace officer
6 in any of the following circumstances:

7 (1) Any circumstances specified in Section 836 or Section 5150 of the Welfare
8 and Institutions Code for violations of state or local laws.

9 (2) When these investigators and law enforcement officers are engaged in the
10 enforcement of federal criminal laws and exercise the arrest powers only
11 incidental to the performance of these duties.

12 (3) When requested by a California law enforcement agency to be involved in a
13 joint task force or criminal investigation.

14 (4) When probable cause exists to believe that a public offense that involves
15 immediate danger to persons or property has just occurred or is being committed.

16 In all of these instances, the provisions of Section 847 shall apply. These
17 investigators and law enforcement officers, prior to the exercise of these arrest
18 powers, shall have been certified by their agency heads as having satisfied the
19 training requirements of Section 832, or the equivalent thereof.

20 This subdivision does not apply to federal officers of the Bureau of Land
21 Management or the Forest Service of the Department of Agriculture. These
22 officers have no authority to enforce California statutes without the written
23 consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

24 (b) Duly authorized federal employees who comply with the training
25 requirements set forth in Section 832 are peace officers when they are engaged in
26 enforcing applicable state or local laws on property owned or possessed by the
27 United States government, or on any street, sidewalk, or property adjacent thereto,
28 and with the written consent of the sheriff or the chief of police, respectively, in
29 whose jurisdiction the property is situated.

30 (c) National park rangers are not California peace officers but may exercise the
31 powers of arrest of a peace officer as specified in Section 836 and the powers of a
32 peace officer specified in Section 5150 of the Welfare and Institutions Code for
33 violations of state or local laws provided these rangers are exercising the arrest
34 powers incidental to the performance of their federal duties or providing or
35 attempting to provide law enforcement services in response to a request initiated
36 by California state park rangers to assist in preserving the peace and protecting
37 state parks and other property for which California state park rangers are
38 responsible. National park rangers, prior to the exercise of these arrest powers,
39 shall have been certified by their agency heads as having satisfactorily completed
40 the training requirements of Section 832.3, or the equivalent thereof.

41 (d) Notwithstanding any other provision of law, during a state of war emergency
42 or a state of emergency, as defined in Section 8558 of the Government Code,
43 federal criminal investigators and law enforcement officers who are assisting

1 California law enforcement officers in carrying out emergency operations are not
2 deemed California peace officers, but may exercise the powers of arrest of a peace
3 officer as specified in Section 836 and the powers of a peace officer specified in
4 Section 5150 of the Welfare and Institutions Code for violations of state or local
5 laws. In these instances, the provisions of Section 847 and of Section 8655 of the
6 Government Code shall apply.

7 (e)(1) Any qualified person who is appointed as a Washoe tribal law
8 enforcement officer is not a California peace officer, but may exercise the powers
9 of a Washoe tribal peace officer when engaged in the enforcement of Washoe
10 tribal criminal laws against any person who is an Indian, as defined in subsection
11 (a) of Section 450b of Title 25 of the United States Code, on Washoe tribal land.
12 The respective prosecuting authorities, in consultation with law enforcement
13 agencies, may agree on who shall have initial responsibility for prosecution of
14 specified infractions. This subdivision is not meant to confer cross-deputized
15 status as California peace officers, nor to confer California peace officer status
16 upon Washoe tribal law enforcement officers when enforcing state or local laws in
17 the State of California. Nothing in this section shall be construed to impose
18 liability upon or to require indemnification by the County of Alpine or the State of
19 California for any act performed by an officer of the Washoe Tribe. Washoe tribal
20 law enforcement officers shall have the right to travel to and from Washoe tribal
21 lands within California in order to carry out tribal duties.

22 (2) Washoe tribal law enforcement officers are exempted from the provisions of
23 subdivision (a) of Section ~~12025~~ and subdivision (a) of Section ~~12031~~ 25400 and
24 subdivisions (a) and (c) to (h), inclusive, of Section 25850 while performing their
25 official duties on their tribal lands or while proceeding by a direct route to or from
26 the tribal lands. Tribal law enforcement vehicles are deemed to be emergency
27 vehicles within the meaning of Section 30 of the Vehicle Code while performing
28 official police services.

29 (3) As used in this subdivision, the term “Washoe tribal lands” includes the
30 following:

31 (A) All lands located in the County of Alpine within the limits of the reservation
32 created for the Washoe Tribe of Nevada and California, notwithstanding the
33 issuance of any patent and including rights-of-way running through the reservation
34 and all tribal trust lands.

35 (B) All Indian allotments, the Indian titles to which have not been extinguished,
36 including rights-of-way running through the same.

37 (4) As used in this subdivision, the term “Washoe tribal law” refers to the laws
38 codified in the Law and Order Code of the Washoe Tribe of Nevada and
39 California, as adopted by the Tribal Council of the Washoe Tribe of Nevada and
40 California.

41 **Comment.** Subdivision (e) of Section 830.8 is amended to reflect nonsubstantive
42 reorganization of the statutes governing control of deadly weapons.

1 **Penal Code § 833.5 (amended). Detention by peace officer to determine whether crime**
2 **relating to firearms or deadly weapons was committed**

3 SEC. ____ . Section 833.5 of the Penal Code is amended to read:

4 833.5. (a) In addition to any other detention permitted by law, if a peace officer
5 has reasonable cause to believe that a person has a firearm or other deadly weapon
6 with him or her in violation of any provision of law relating to firearms or deadly
7 weapons the peace officer may detain that person to determine whether a crime
8 relating to firearms or deadly weapons has been committed.

9 For purposes of this section “reasonable cause to detain” requires that the
10 circumstances known or apparent to the officer must include specific and
11 articulable facts causing him or her to suspect that some offense relating to
12 firearms or deadly weapons has taken place or is occurring or is about to occur and
13 that the person he or she intends to detain is involved in that offense. The
14 circumstances must be such as would cause any reasonable peace officer in like
15 position, drawing when appropriate on his or her training and experience, to
16 suspect the same offense and the same involvement by the person in question.

17 (b) Incident to any detention permitted pursuant to subdivision (a), a peace
18 officer may conduct a limited search of the person for firearms or weapons if the
19 peace officer reasonably concludes that the person detained may be armed and
20 presently dangerous to the peace officer or others. Any firearm or weapon seized
21 pursuant to a valid detention or search pursuant to this section shall be admissible
22 in evidence in any proceeding for any purpose permitted by law.

23 (c) This section shall not be construed to otherwise limit the authority of a peace
24 officer to detain any person or to make an arrest based on reasonable cause.

25 (d) This section shall not be construed to permit a peace officer to conduct a
26 detention or search of any person at the person’s residence or place of business
27 absent a search warrant or other reasonable cause to detain or search.

28 (e) If a firearm or weapon is seized pursuant to this section and the person from
29 whom it was seized owned the firearm or weapon and is convicted of a violation
30 of any offense relating to the possession of ~~such~~ the firearm or weapon, the court
31 shall order the firearm or weapon to be deemed a nuisance and disposed of in the
32 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

33 **Comment.** Subdivision (e) of Section 833.5 is amended to reflect nonsubstantive
34 reorganization of the statutes governing control of deadly weapons. That subdivision is also
35 amended to make a technical revision.

36 **Penal Code § 836 (amended). Arrest**

37 SEC. ____ . Section 836 of the Penal Code is amended to read:

38 836. (a) A peace officer may arrest a person in obedience to a warrant, or,
39 pursuant to the authority granted to him or her by Chapter 4.5 (commencing with
40 Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever
41 any of the following circumstances occur:

1 (1) The officer has probable cause to believe that the person to be arrested has
2 committed a public offense in the officer's presence.

3 (2) The person arrested has committed a felony, although not in the officer's
4 presence.

5 (3) The officer has probable cause to believe that the person to be arrested has
6 committed a felony, whether or not a felony, in fact, has been committed.

7 (b) Any time a peace officer is called out on a domestic violence call, it shall be
8 mandatory that the officer make a good faith effort to inform the victim of his or
9 her right to make a citizen's arrest. This information shall include advising the
10 victim how to safely execute the arrest.

11 (c)(1) When a peace officer is responding to a call alleging a violation of a
12 domestic violence protective or restraining order issued under Section 527.6 of the
13 Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2)
14 of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of
15 the Welfare and Institutions Code, or of a domestic violence protective or
16 restraining order issued by the court of another state, tribe, or territory and the
17 peace officer has probable cause to believe that the person against whom the order
18 is issued has notice of the order and has committed an act in violation of the order,
19 the officer shall, consistent with subdivision (b) of Section 13701, make a lawful
20 arrest of the person without a warrant and take that person into custody whether or
21 not the violation occurred in the presence of the arresting officer. The officer shall,
22 as soon as possible after the arrest, confirm with the appropriate authorities or the
23 Domestic Violence Protection Order Registry maintained pursuant to Section 6380
24 of the Family Code that a true copy of the protective order has been registered,
25 unless the victim provides the officer with a copy of the protective order.

26 (2) The person against whom a protective order has been issued shall be deemed
27 to have notice of the order if the victim presents to the officer proof of service of
28 the order, the officer confirms with the appropriate authorities that a true copy of
29 the proof of service is on file, or the person against whom the protective order was
30 issued was present at the protective order hearing or was informed by a peace
31 officer of the contents of the protective order.

32 (3) In situations where mutual protective orders have been issued under Division
33 10 (commencing with Section 6200) of the Family Code, liability for arrest under
34 this subdivision applies only to those persons who are reasonably believed to have
35 been the primary aggressor. In those situations, prior to making an arrest under
36 this subdivision, the peace officer shall make reasonable efforts to identify, and
37 may arrest, the primary aggressor involved in the incident. The primary aggressor
38 is the person determined to be the most significant, rather than the first, aggressor.
39 In identifying the primary aggressor, an officer shall consider (A) the intent of the
40 law to protect victims of domestic violence from continuing abuse, (B) the threats
41 creating fear of physical injury, (C) the history of domestic violence between the
42 persons involved, and (D) whether either person involved acted in self-defense.

1 (d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an
2 assault or battery upon a current or former spouse, fiance, fiancée, a current or
3 former cohabitant as defined in Section 6209 of the Family Code, a person with
4 whom the suspect currently is having or has previously had an engagement or
5 dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243,
6 a person with whom the suspect has parented a child, or is presumed to have
7 parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with
8 Section 7600) of Division 12 of the Family Code), a child of the suspect, a child
9 whose parentage by the suspect is the subject of an action under the Uniform
10 Parentage Act, a child of a person in one of the above categories, any other person
11 related to the suspect by consanguinity or affinity within the second degree, or any
12 person who is 65 years of age or older and who is related to the suspect by blood
13 or legal guardianship, a peace officer may arrest the suspect without a warrant
14 where both of the following circumstances apply:

15 (1) The peace officer has probable cause to believe that the person to be arrested
16 has committed the assault or battery, whether or not it has in fact been committed.

17 (2) The peace officer makes the arrest as soon as probable cause arises to believe
18 that the person to be arrested has committed the assault or battery, whether or not
19 it has in fact been committed.

20 (e) In addition to the authority to make an arrest without a warrant pursuant to
21 paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant,
22 arrest a person for a violation of Section ~~12025~~ 25400 when all of the following
23 apply:

24 (1) The officer has reasonable cause to believe that the person to be arrested has
25 committed the violation of Section ~~12025~~ 25400.

26 (2) The violation of Section ~~12025~~ 25400 occurred within an airport, as defined
27 in Section 21013 of the Public Utilities Code, in an area to which access is
28 controlled by the inspection of persons and property.

29 (3) The peace officer makes the arrest as soon as reasonable cause arises to
30 believe that the person to be arrested has committed the violation of Section ~~12025~~
31 25400.

32 **Comment.** Subdivision (e) of Section 836 is amended to reflect nonsubstantive reorganization
33 of the statutes governing control of deadly weapons.

34 **Penal Code § 999e (amended). Career criminal prosecution**

35 SEC. ____ . Section 999e of the Penal Code is amended to read:

36 999e. (a) An individual who is under arrest for the commission or attempted
37 commission of one or more of the felonies listed in paragraph (1) and who is either
38 being prosecuted for three or more separate offenses not arising out of the same
39 transaction involving one or more of those felonies, or has been convicted during
40 the preceding 10 years for any felony listed in paragraph (2) of this subdivision, or
41 at least two convictions during the preceding 10 years for any felony listed in

1 paragraph (3) of this subdivision shall be the subject of career criminal prosecution
2 efforts.

3 (1) Murder, manslaughter, rape, sexual assault, child molestation, robbery,
4 carjacking, burglary, arson, receiving stolen property, grand theft, grand theft auto,
5 lewd and lascivious conduct upon a child, assault with a firearm, discharging a
6 firearm into an inhabited structure or vehicle, owning, possessing, or having
7 custody or control of a firearm, as specified in subdivision (a) or (b) of Section
8 ~~12021 29800~~, or any unlawful act relating to controlled substances in violation of
9 ~~Sections~~ Section 11351, 11351.5, 11352, or 11378 of the Health and Safety Code.

10 (2) Robbery of the first degree, carjacking, burglary of the first degree, arson as
11 defined in Section 451, unlawfully causing a fire as defined in Section 452,
12 forcible rape, sodomy or oral copulation committed with force, lewd or lascivious
13 conduct committed upon a child, kidnapping as defined in Section 209 or 209.5,
14 murder, or manslaughter.

15 (3) Grand theft, grand theft auto, receiving stolen property, robbery of the
16 second degree, burglary of the second degree, kidnapping as defined in Section
17 207, assault with a deadly weapon or instrument, or any unlawful act relating to
18 controlled substances in violation of Section 11351 or 11352 of the Health and
19 Safety Code.

20 For purposes of this chapter, the 10-year periods specified in this section shall be
21 exclusive of any time which the arrested person has served in state prison.

22 (b) In applying the career criminal selection criteria set forth above, a district
23 attorney may elect to limit career criminal prosecution efforts to persons arrested
24 for any one or more of the felonies listed in subdivision (a) of this section if crime
25 statistics demonstrate that the incidence of one or more of these felonies presents a
26 particularly serious problem in the county.

27 (c) In exercising the prosecutorial discretion granted by Section 999g, the
28 district attorney shall consider the character, background, and prior criminal
29 background of the defendant, and the number and the seriousness of the offenses
30 currently charged against the defendant.

31 **Comment.** Subdivision (a) of Section 999e is amended to reflect nonsubstantive reorganization
32 of the statutes governing control of deadly weapons. That subdivision is also amended to make a
33 technical revision.

34 For guidance in applying this section, see Section 16015 (determining existence of prior
35 conviction).

36 **Penal Code § 1170.11 (amended). Specific enhancement defined for purposes of Section**
37 **1170.1**

38 SEC. ____ . Section 1170.11 of the Penal Code is amended to read:

39 1170.11. As used in Section 1170.1, the term “specific enhancement” means an
40 enhancement that relates to the circumstances of the crime. It includes, but is not
41 limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26,
42 186.33, 192.5, 273.4, 289.5, 290.4, 290.45, 290.46, 347, and 368, subdivisions (a)
43 and (b) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of

1 Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1,
2 subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10,
3 667.15, 667.16, 667.17, 674, 675, 12021.5, 12022, 12022.2, 12022.3, 12022.4,
4 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85,
5 12022.9, 12022.95, ~~12072 and 12280~~ 27590, 30600, and 30615 of this code, and
6 in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections
7 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.7,
8 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and
9 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and
10 Institutions Code.

11 **Comment.** Section 1170.11 is amended to reflect nonsubstantive reorganization of the statutes
12 governing control of deadly weapons.

13 **Penal Code § 1174.4 (amended). Persons eligible for alternative sentencing program**

14 SEC. _____. Section 1174.4 of the Penal Code is amended to read:

15 1174.4. (a) Persons eligible for participation in this alternative sentencing
16 program shall meet all of the following criteria:

17 (1) Pregnant women with an established history of substance abuse, or pregnant
18 or parenting women with an established history of substance abuse who have one
19 or more children under six years old at the time of entry into the program. For
20 women with children, at least one eligible child shall reside with the mother in the
21 facility.

22 (2) Never served a prior prison term for, nor been convicted in the present
23 proceeding of, committing or attempting to commit, any of the following offenses:

24 (A) Murder or voluntary manslaughter.

25 (B) Mayhem.

26 (C) Rape.

27 (D) Kidnapping.

28 (E) Sodomy by force, violence, duress, menace, or fear of immediate and
29 unlawful bodily injury on the victim or another person.

30 (F) Oral copulation by force, violence, duress, menace, or fear of immediate and
31 unlawful bodily injury on the victim or another person.

32 (G) Lewd acts on a child under 14 years of age, as defined in Section 288.

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

34 (I) Any felony in which the defendant inflicts great bodily injury on any person,
35 other than an accomplice, that has been charged and proved as provided for in
36 Section 12022.53, 12022.7, or 12022.9, or any felony in which the defendant uses
37 a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use
38 has been charged and proved.

39 (J) Robbery.

40 (K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as
41 defined in the Vehicle Code, or in the inhabited portion of any other building,
42 wherein it is charged and proved that the defendant personally used a deadly or

1 dangerous weapon, as provided in subdivision (b) of Section 12022, in the
2 commission of that robbery.

3 (L) Arson in violation of subdivision (a) of Section 451.

4 (M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is
5 accomplished against the victim's will by force, violence, duress, menace, or fear
6 of immediate and unlawful bodily injury on the victim or another person.

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

8 (O) Continual sexual abuse of a child in violation of Section 288.5.

9 (P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape
10 in concert with another, lascivious acts upon a child, or sexual penetration.

11 (Q) Assault with a deadly weapon or with force likely to produce great bodily
12 injury in violation of subdivision (a) of Section 245.

13 (R) Any violent felony defined in Section 667.5.

14 (S) A violation of Section 12022.

15 (T) A violation of Section ~~12308~~ 18745.

16 (U) Burglary of the first degree.

17 (V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360,
18 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of
19 the Health and Safety Code.

20 (3) Has not been sentenced to state prison for a term exceeding 36 months.

21 (b) Prior to sentencing, if the court proposes to give consideration to a
22 placement, the court shall consider a written evaluation by the probation
23 department, which shall include the following:

24 (1) Whether the defendant is eligible for participation pursuant to this section.

25 (2) Whether participation by the defendant and her eligible children is deemed to
26 be in the best interests of the children.

27 (3) Whether the defendant is amenable to treatment for substance abuse and
28 would benefit from participation in the program.

29 (4) Whether the program is deemed to be in the best interests of an eligible child
30 of the defendant, as determined by a representative of the appropriate child
31 welfare services agency of the county if the child is a dependent child of the
32 juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

33 (c) The district attorney shall make a recommendation to the court as to whether
34 or not the defendant would benefit from the program, which the court shall
35 consider in making its decision. If the court's decision is without the concurrence
36 of the district attorney, the court shall specify its reasons in writing and enter them
37 into the record.

38 (d) If the court determines that the defendant may benefit from participation in
39 this program, the court may impose a state prison sentence with the
40 recommendation that the defendant participate in the program pursuant to this
41 chapter. The court shall notify the department within 48 hours of imposition of this
42 sentence.

1 (e) The Director of Corrections shall consider the court's recommendation in
2 making a determination on the inmate's placement in the program.

3 (f) Women accepted for the program by the Director of Corrections shall be
4 delivered by the county, pursuant to Section 1202a, to the facility selected by the
5 department. Before the director accepts a woman for the program, the county shall
6 provide to the director the necessary information to determine her eligibility and
7 appropriate placement status. Priority for services and aftercare shall be given to
8 inmates who are incarcerated in a county, or adjacent to a county, in which a
9 program facility is located.

10 (g) Prior to being admitted to the program, each participant shall voluntarily sign
11 an agreement specifying the terms and conditions of participation in the program.

12 (h) The department may refer inmates back to the sentencing court if the
13 department determines that an eligible inmate has not been recommended for the
14 program. The department shall refer the inmate to the court by an evaluative report
15 so stating the department's assessment of eligibility, and requesting a
16 recommendation by the court.

17 (i) Women who successfully complete the program, including the minimum of
18 one year of transition services under intensive parole supervision, shall be
19 discharged from parole. Women who do not successfully complete the program
20 shall be returned to the state prison where they shall serve their original sentences.
21 These persons shall receive full credit against their original sentences for the time
22 served in the program, pursuant to Section 2933.

23 **Comment.** Subdivision (a) of Section 1174.4 is amended to reflect nonsubstantive
24 reorganization of the statutes governing control of deadly weapons.

25 For guidance in applying this section, see Section 16015 (determining existence of prior
26 conviction).

27 **Penal Code § 1192.7 (amended). Prosecution of sex crimes**

28 SEC. ____ . Section 1192.7 of the Penal Code is amended to read:

29 1192.7. (a)(1) It is the intent of the Legislature that district attorneys prosecute
30 violent sex crimes under statutes that provide sentencing under a "one strike,"
31 "three strikes" or habitual sex offender statute instead of engaging in plea
32 bargaining over those offenses.

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

40 (3) If the indictment or information charges the defendant with a violent sex
41 crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted
42 under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section

1 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient
2 evidence to prove the people’s case, or testimony of a material witness cannot be
3 obtained, or a reduction or dismissal would not result in a substantial change in
4 sentence. At the time of presenting the agreement to the court, the district attorney
5 shall state on the record why a sentence under one of those sections was not
6 sought.

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

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

14 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by
15 force, violence, duress, menace, threat of great bodily injury, or fear of immediate
16 and unlawful bodily injury on the victim or another person; (5) oral copulation by
17 force, violence, duress, menace, threat of great bodily injury, or fear of immediate
18 and unlawful bodily injury on the victim or another person; (6) lewd or lascivious
19 act on a child under 14 years of age; (7) any felony punishable by death or
20 imprisonment in the state prison for life; (8) any felony in which the defendant
21 personally inflicts great bodily injury on any person, other than an accomplice, or
22 any felony in which the defendant personally uses a firearm; (9) attempted murder;
23 (10) assault with intent to commit rape or robbery; (11) assault with a deadly
24 weapon or instrument on a peace officer; (12) assault by a life prisoner on a
25 noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15)
26 exploding a destructive device or any explosive with intent to injure; (16)
27 exploding a destructive device or any explosive causing bodily injury, great bodily
28 injury, or mayhem; (17) exploding a destructive device or any explosive with
29 intent to murder; (18) any burglary of the first degree; (19) robbery or bank
30 robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state
31 prison; (22) attempt to commit a felony punishable by death or imprisonment in
32 the state prison for life; (23) any felony in which the defendant personally used a
33 dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or
34 offering to sell, furnish, administer, or give to a minor any heroin, cocaine,
35 phencyclidine (PCP), or any methamphetamine-related drug, as described in
36 paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code,
37 or any of the precursors of methamphetamines, as described in subparagraph (A)
38 of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
39 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of
40 Section 289 where the act is accomplished against the victim’s will by force,
41 violence, duress, menace, or fear of immediate and unlawful bodily injury on the
42 victim or another person; (26) grand theft involving a firearm; (27) carjacking;
43 (28) any felony offense, which would also constitute a felony violation of Section

1 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral
2 copulation, in violation of Section 220; (30) throwing acid or flammable
3 substances, in violation of Section 244; (31) assault with a deadly weapon,
4 firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a
5 peace officer or firefighter, in violation of Section 245; (32) assault with a deadly
6 weapon against a public transit employee, custodial officer, or school employee, in
7 violation of ~~Sections~~ Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at
8 an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34)
9 commission of rape or sexual penetration in concert with another person, in
10 violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of
11 Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d)
12 of Section ~~12034~~ 26100; (37) intimidation of victims or witnesses, in violation of
13 Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt
14 to commit a crime listed in this subdivision other than an assault; (40) any
15 violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section
16 11418; and (42) any conspiracy to commit an offense described in this
17 subdivision.

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

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

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

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

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

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

39 **Comment.** Subdivision (c) of Section 1192.7 is amended to reflect nonsubstantive
40 reorganization of the statutes governing control of deadly weapons. That subdivision is also
41 amended to make a technical revision.

1 **Penal Code § 1203 (amended). Probation and conditional sentence**

2 SEC. ____ . Section 1203 of the Penal Code is amended to read:

3 1203. (a) As used in this code, “probation” means the suspension of the
4 imposition or execution of a sentence and the order of conditional and revocable
5 release in the community under the supervision of a probation officer. As used in
6 this code, “conditional sentence” means the suspension of the imposition or
7 execution of a sentence and the order of revocable release in the community
8 subject to conditions established by the court without the supervision of a
9 probation officer. It is the intent of the Legislature that both conditional sentence
10 and probation are authorized whenever probation is authorized in any code as a
11 sentencing option for infractions or misdemeanors.

12 (b)(1) Except as provided in subdivision (j), if a person is convicted of a felony
13 and is eligible for probation, before judgment is pronounced, the court shall
14 immediately refer the matter to a probation officer to investigate and report to the
15 court, at a specified time, upon the circumstances surrounding the crime and the
16 prior history and record of the person, which may be considered either in
17 aggravation or mitigation of the punishment.

18 (2)(A) The probation officer shall immediately investigate and make a written
19 report to the court of his or her findings and recommendations, including his or her
20 recommendations as to the granting or denying of probation and the conditions of
21 probation, if granted.

22 (B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation
23 officer shall include in his or her report any information gathered by a law
24 enforcement agency relating to the taking of the defendant into custody as a minor,
25 which shall be considered for purposes of determining whether adjudications of
26 commissions of crimes as a juvenile warrant a finding that there are circumstances
27 in aggravation pursuant to Section 1170 or to deny probation.

28 (C) If the person was convicted of an offense that requires him or her to register
29 as a sex offender pursuant to Section 290, the probation officer’s report shall
30 include the results of the State-Authorized Risk Assessment Tool for Sex
31 Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06,
32 inclusive, if applicable.

33 (D) The probation officer shall also include in the report his or her
34 recommendation of both of the following:

35 (i) The amount the defendant should be required to pay as a restitution fine
36 pursuant to subdivision (b) of Section 1202.4.

37 (ii) Whether the court shall require, as a condition of probation, restitution to the
38 victim or to the Restitution Fund and the amount thereof.

39 (E) The report shall be made available to the court and the prosecuting and
40 defense attorneys at least five days, or upon request of the defendant or
41 prosecuting attorney nine days, prior to the time fixed by the court for the hearing
42 and determination of the report, and shall be filed with the clerk of the court as a
43 record in the case at the time of the hearing. The time within which the report shall

1 be made available and filed may be waived by written stipulation of the
2 prosecuting and defense attorneys that is filed with the court or an oral stipulation
3 in open court that is made and entered upon the minutes of the court.

4 (3) At a time fixed by the court, the court shall hear and determine the
5 application, if one has been made, or, in any case, the suitability of probation in
6 the particular case. At the hearing, the court shall consider any report of the
7 probation officer, including the results of the SARATSO, if applicable, and shall
8 make a statement that it has considered the report, which shall be filed with the
9 clerk of the court as a record in the case. If the court determines that there are
10 circumstances in mitigation of the punishment prescribed by law or that the ends
11 of justice would be served by granting probation to the person, it may place the
12 person on probation. If probation is denied, the clerk of the court shall
13 immediately send a copy of the report to the Department of Corrections and
14 Rehabilitation at the prison or other institution to which the person is delivered.

15 (4) The preparation of the report or the consideration of the report by the court
16 may be waived only by a written stipulation of the prosecuting and defense
17 attorneys that is filed with the court or an oral stipulation in open court that is
18 made and entered upon the minutes of the court, except that there shall be no
19 waiver unless the court consents thereto. However, if the defendant is ultimately
20 sentenced and committed to the state prison, a probation report shall be completed
21 pursuant to Section 1203c.

22 (c) If a defendant is not represented by an attorney, the court shall order the
23 probation officer who makes the probation report to discuss its contents with the
24 defendant.

25 (d) If a person is convicted of a misdemeanor, the court may either refer the
26 matter to the probation officer for an investigation and a report or summarily
27 pronounce a conditional sentence. If the person was convicted of an offense that
28 requires him or her to register as a sex offender pursuant to Section 290, the court
29 shall refer the matter to the probation officer for the purpose of obtaining a report
30 on the results of the State-Authorized Risk Assessment Tool for Sex Offenders
31 administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which
32 the court shall consider. If the case is not referred to the probation officer, in
33 sentencing the person, the court may consider any information concerning the
34 person that could have been included in a probation report. The court shall inform
35 the person of the information to be considered and permit him or her to answer or
36 controvert the information. For this purpose, upon the request of the person, the
37 court shall grant a continuance before the judgment is pronounced.

38 (e) Except in unusual cases where the interests of justice would best be served if
39 the person is granted probation, probation shall not be granted to any of the
40 following persons:

41 (1) Unless the person had a lawful right to carry a deadly weapon, other than a
42 firearm, at the time of the perpetration of the crime or his or her arrest, any person
43 who has been convicted of arson, robbery, carjacking, burglary, burglary with

1 explosives, rape with force or violence, torture, aggravated mayhem, murder,
2 attempt to commit murder, trainwrecking, kidnapping, escape from the state
3 prison, or a conspiracy to commit one or more of those crimes and who was armed
4 with the weapon at either of those times.

5 (2) Any person who used, or attempted to use, a deadly weapon upon a human
6 being in connection with the perpetration of the crime of which he or she has been
7 convicted.

8 (3) Any person who willfully inflicted great bodily injury or torture in the
9 perpetration of the crime of which he or she has been convicted.

10 (4) Any person who has been previously convicted twice in this state of a felony
11 or in any other place of a public offense which, if committed in this state, would
12 have been punishable as a felony.

13 (5) Unless the person has never been previously convicted once in this state of a
14 felony or in any other place of a public offense which, if committed in this state,
15 would have been punishable as a felony, any person who has been convicted of
16 burglary with explosives, rape with force or violence, torture, aggravated mayhem,
17 murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape
18 from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a
19 conspiracy to commit one or more of those crimes.

20 (6) Any person who has been previously convicted once in this state of a felony
21 or in any other place of a public offense which, if committed in this state, would
22 have been punishable as a felony, if he or she committed any of the following acts:

23 (A) Unless the person had a lawful right to carry a deadly weapon at the time of
24 the perpetration of the previous crime or his or her arrest for the previous crime, he
25 or she was armed with a weapon at either of those times.

26 (B) The person used, or attempted to use, a deadly weapon upon a human being
27 in connection with the perpetration of the previous crime.

28 (C) The person willfully inflicted great bodily injury or torture in the
29 perpetration of the previous crime.

30 (7) Any public official or peace officer of this state or any city, county, or other
31 political subdivision who, in the discharge of the duties of his or her public office
32 or employment, accepted or gave or offered to accept or give any bribe, embezzled
33 public money, or was guilty of extortion.

34 (8) Any person who knowingly furnishes or gives away phencyclidine.

35 (9) Any person who intentionally inflicted great bodily injury in the commission
36 of arson under subdivision (a) of Section 451 or who intentionally set fire to,
37 burned, or caused the burning of, an inhabited structure or inhabited property in
38 violation of subdivision (b) of Section 451.

39 (10) Any person who, in the commission of a felony, inflicts great bodily injury
40 or causes the death of a human being by the discharge of a firearm from or at an
41 occupied motor vehicle proceeding on a public street or highway.

1 (11) Any person who possesses a short-barreled rifle or a short-barreled shotgun
2 under Section ~~12020~~ 33215, a machinegun under Section ~~12220~~ 32625, or a
3 silencer under Section ~~12520~~ 33410.

4 (12) Any person who is convicted of violating Section 8101 of the Welfare and
5 Institutions Code.

6 (13) Any person who is described in ~~paragraph (2) or (3) of subdivision (g) of~~
7 ~~Section 12072~~ subdivision (b) or (c) of Section 27590.

8 (f) When probation is granted in a case which comes within subdivision (e), the
9 court shall specify on the record and shall enter on the minutes the circumstances
10 indicating that the interests of justice would best be served by that disposition.

11 (g) If a person is not eligible for probation, the judge shall refer the matter to the
12 probation officer for an investigation of the facts relevant to determination of the
13 amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all
14 cases where the determination is applicable. The judge, in his or her discretion,
15 may direct the probation officer to investigate all facts relevant to the sentencing
16 of the person. Upon that referral, the probation officer shall immediately
17 investigate the circumstances surrounding the crime and the prior record and
18 history of the person and make a written report to the court of his or her findings.
19 The findings shall include a recommendation of the amount of the restitution fine
20 as provided in subdivision (b) of Section 1202.4.

21 (h) If a defendant is convicted of a felony and a probation report is prepared
22 pursuant to subdivision (b) or (g), the probation officer may obtain and include in
23 the report a statement of the comments of the victim concerning the offense. The
24 court may direct the probation officer not to obtain a statement if the victim has in
25 fact testified at any of the court proceedings concerning the offense.

26 (i) No probationer shall be released to enter another state unless his or her case
27 has been referred to the Administrator of the Interstate Probation and Parole
28 Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee
29 Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1
30 of Part 4) and the probationer has reimbursed the county that has jurisdiction over
31 his or her probation case the reasonable costs of processing his or her request for
32 interstate compact supervision. The amount and method of reimbursement shall be
33 in accordance with Section 1203.1b.

34 (j) In any court where a county financial evaluation officer is available, in
35 addition to referring the matter to the probation officer, the court may order the
36 defendant to appear before the county financial evaluation officer for a financial
37 evaluation of the defendant's ability to pay restitution, in which case the county
38 financial evaluation officer shall report his or her findings regarding restitution
39 and other court-related costs to the probation officer on the question of the
40 defendant's ability to pay those costs.

41 Any order made pursuant to this subdivision may be enforced as a violation of
42 the terms and conditions of probation upon willful failure to pay and at the
43 discretion of the court, may be enforced in the same manner as a judgment in a

1 civil action, if any balance remains unpaid at the end of the defendant's
2 probationary period.

3 (k) Probation shall not be granted to, nor shall the execution of, or imposition of
4 sentence be suspended for, any person who is convicted of a violent felony, as
5 defined in subdivision (c) of Section 667.5, or a serious felony, as defined in
6 subdivision (c) of Section 1192.7, and who was on probation for a felony offense
7 at the time of the commission of the new felony offense.

8 **Comment.** Subdivision (e) of Section 1203 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

10 **Penal Code § 1203.1 (amended). Terms and conditions of probation**

11 SEC. ____ . Section 1203.1 of the Penal Code is amended to read:

12 1203.1. (a) The court, or judge thereof, in the order granting probation, may
13 suspend the imposing or the execution of the sentence and may direct that the
14 suspension may continue for a period of time not exceeding the maximum possible
15 term of the sentence, except as hereinafter set forth, and upon those terms and
16 conditions as it shall determine. The court, or judge thereof, in the order granting
17 probation and as a condition thereof, may imprison the defendant in a county jail
18 for a period not exceeding the maximum time fixed by law in the case.

19 However, where the maximum possible term of the sentence is five years or
20 less, then the period of suspension of imposition or execution of sentence may, in
21 the discretion of the court, continue for not over five years. The following shall
22 apply to this subdivision:

23 (1) The court may fine the defendant in a sum not to exceed the maximum fine
24 provided by law in the case.

25 (2) The court may, in connection with granting probation, impose either
26 imprisonment in a county jail or a fine, both, or neither.

27 (3) The court shall provide for restitution in proper cases. The restitution order
28 shall be fully enforceable as a civil judgment forthwith and in accordance with
29 Section 1202.4 of the Penal Code.

30 (4) The court may require bonds for the faithful observance and performance of
31 any or all of the conditions of probation.

32 (b) The court shall consider whether the defendant as a condition of probation
33 shall make restitution to the victim or the Restitution Fund. Any restitution
34 payment received by a probation department in the form of cash or money order
35 shall be forwarded to the victim within 30 days from the date the payment is
36 received by the department. Any restitution payment received by a probation
37 department in the form of a check or draft shall be forwarded to the victim within
38 45 days from the date the payment is received by the department, provided, that
39 payment need not be forwarded to a victim until 180 days from the date the first
40 payment is received, if the restitution payments for that victim received by the
41 probation department total less than fifty dollars (\$50). In cases where the court
42 has ordered the defendant to pay restitution to multiple victims and where the

1 administrative cost of disbursing restitution payments to multiple victims involves
2 a significant cost, any restitution payment received by a probation department
3 shall be forwarded to multiple victims when it is cost-effective to do so, but in no
4 event shall restitution disbursements be delayed beyond 180 days from the date the
5 payment is received by the probation department.

6 (c) In counties or cities and counties where road camps, farms, or other public
7 work is available the court may place the probationer in the road camp, farm, or
8 other public work instead of in jail. In this case, Section 25359 of the Government
9 Code shall apply to probation and the court shall have the same power to require
10 adult probationers to work, as prisoners confined in the county jail are required to
11 work, at public work. Each county board of supervisors may fix the scale of
12 compensation of the adult probationers in that county.

13 (d) In all cases of probation the court may require as a condition of probation
14 that the probationer go to work and earn money for the support of his or her
15 dependents or to pay any fine imposed or reparation condition, to keep an account
16 of his or her earnings, to report them to the probation officer and apply those
17 earnings as directed by the court.

18 (e) The court shall also consider whether the defendant as a condition of
19 probation shall make restitution to a public agency for the costs of an emergency
20 response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of
21 Part 1 of Division 2 of the Government Code.

22 (f) In all felony cases in which, as a condition of probation, a judge of the
23 superior court sitting by authority of law elsewhere than at the county seat requires
24 a convicted person to serve his or her sentence at intermittent periods the sentence
25 may be served on the order of the judge at the city jail nearest to the place at which
26 the court is sitting, and the cost of his or her maintenance shall be a county charge.

27 (g)(1) The court and prosecuting attorney shall consider whether any defendant
28 who has been convicted of a nonviolent or nonserious offense and ordered to
29 participate in community service as a condition of probation shall be required to
30 engage in the removal of graffiti in the performance of the community service. For
31 the purpose of this subdivision, a nonserious offense shall not include the
32 following:

33 (A) Offenses in violation of the Dangerous ~~Weapons'~~ Weapons Control Law
34 ~~(Chapter 1 (commencing with Section 12000) of Title 2 of Part 4)~~ , as defined in
35 Section 23500.

36 (B) Offenses involving the use of a dangerous or deadly weapon, including all
37 violations of Section 417.

38 (C) Offenses involving the use or attempted use of violence against the person
39 of another or involving injury to a victim.

40 (D) Offenses involving annoying or molesting children.

41 (2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates
42 ~~Section 12101~~ Chapter 1 (commencing with Section 29610) of Division 9 of Title

1 4 of Part 6 shall be ordered to perform not less than 100 hours and not more than
2 500 hours of community service as a condition of probation.

3 (3) The court and the prosecuting attorney need not consider a defendant
4 pursuant to paragraph (1) if the following circumstances exist:

5 (A) The defendant was convicted of any offense set forth in subdivision (c) of
6 Section 667.5 or subdivision (c) of Section 1192.7.

7 (B) The judge believes that the public safety may be endangered if the person is
8 ordered to do community service or the judge believes that the facts or
9 circumstances or facts and circumstances call for imposition of a more substantial
10 penalty.

11 (h) The probation officer or his or her designated representative shall consider
12 whether any defendant who has been convicted of a nonviolent and nonserious
13 offense and ordered to participate in community service as a condition of
14 probation shall be required to engage in the performance of house repairs or yard
15 services for senior citizens and the performance of repairs to senior centers
16 through contact with local senior service organizations in the performance of the
17 community service.

18 (i)(1) Upon conviction of any offense involving child abuse or neglect, the court
19 may require, in addition to any or all of the above-mentioned terms of
20 imprisonment, fine, and other reasonable conditions, that the defendant shall
21 participate in counseling or education programs, or both, including, but not limited
22 to, parent education or parenting programs operated by community colleges,
23 school districts, other public agencies, or private agencies.

24 (2) Upon conviction of any sex offense subjecting the defendant to the
25 registration requirements of Section 290, the court may order as a condition of
26 probation, at the request of the victim or in the court's discretion, that the
27 defendant stay away from the victim and the victim's residence or place of
28 employment, and that the defendant have no contact with the victim in person, by
29 telephone or electronic means, or by mail.

30 (j) The court may impose and require any or all of the above-mentioned terms of
31 imprisonment, fine, and conditions, and other reasonable conditions, as it may
32 determine are fitting and proper to the end that justice may be done, that amends
33 may be made to society for the breach of the law, for any injury done to any
34 person resulting from that breach, and generally and specifically for the
35 reformation and rehabilitation of the probationer, and that should the probationer
36 violate any of the terms or conditions imposed by the court in the matter, it shall
37 have authority to modify and change any and all the terms and conditions and to
38 reimprison the probationer in the county jail within the limitations of the penalty
39 of the public offense involved. Upon the defendant being released from the county
40 jail under the terms of probation as originally granted or any modification
41 subsequently made, and in all cases where confinement in a county jail has not
42 been a condition of the grant of probation, the court shall place the defendant or
43 probationer in and under the charge of the probation officer of the court, for the

1 period or term fixed for probation. However, upon the payment of any fine
2 imposed and the fulfillment of all conditions of probation, probation shall cease at
3 the end of the term of probation, or sooner, in the event of modification. In
4 counties and cities and counties in which there are facilities for taking fingerprints,
5 those of each probationer shall be taken and a record of them kept and preserved.

6 (k) Notwithstanding any other provisions of law to the contrary, except as
7 provided in Section 13967, as operative on or before September 28, 1994, of the
8 Government Code and Section 13967.5 of the Government Code and Sections
9 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section
10 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines
11 collected by a county probation officer in any of the courts of this state, as a
12 condition of the granting of probation or as a part of the terms of probation, shall
13 be paid into the county treasury and placed in the general fund for the use and
14 benefit of the county.

15 (l) If the court orders restitution to be made to the victim, the board of
16 supervisors may add a fee to cover the actual administrative cost of collecting
17 restitution but not to exceed 10 percent of the total amount ordered to be paid. The
18 fees shall be paid into the general fund of the county treasury for the use and
19 benefit of the county.

20 **Comment.** Subdivision (g) of Section 1203.1 is amended to reflect nonsubstantive
21 reorganization of the statutes governing control of deadly weapons. That subdivision is also
22 amended to make a technical revision.

23 **Penal Code § 1203.4 (amended). Dismissal of information or accusation**

24 SEC. ____. Section 1203.4 of the Penal Code is amended to read:

25 1203.4. (a) In any case in which a defendant has fulfilled the conditions of
26 probation for the entire period of probation, or has been discharged prior to the
27 termination of the period of probation, or in any other case in which a court, in its
28 discretion and the interests of justice, determines that a defendant should be
29 granted the relief available under this section, the defendant shall, at any time after
30 the termination of the period of probation, if he or she is not then serving a
31 sentence for any offense, on probation for any offense, or charged with the
32 commission of any offense, be permitted by the court to withdraw his or her plea
33 of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she
34 has been convicted after a plea of not guilty, the court shall set aside the verdict of
35 guilty; and, in either case, the court shall thereupon dismiss the accusations or
36 information against the defendant and except as noted below, he or she shall
37 thereafter be released from all penalties and disabilities resulting from the offense
38 of which he or she has been convicted, except as provided in Section 13555 of the
39 Vehicle Code. The probationer shall be informed, in his or her probation papers, of
40 this right and privilege and his or her right, if any, to petition for a certificate of
41 rehabilitation and pardon. The probationer may make the application and change
42 of plea in person or by attorney, or by the probation officer authorized in writing.

1 However, in any subsequent prosecution of the defendant for any other offense,
2 the prior conviction may be pleaded and proved and shall have the same effect as
3 if probation had not been granted or the accusation or information dismissed. The
4 order shall state, and the probationer shall be informed, that the order does not
5 relieve him or her of the obligation to disclose the conviction in response to any
6 direct question contained in any questionnaire or application for public office, for
7 licensure by any state or local agency, or for contracting with the California State
8 Lottery.

9 Dismissal of an accusation or information pursuant to this section does not
10 permit a person to own, possess, or have in his or her custody or control any
11 firearm or prevent his or her conviction under ~~Section 12021~~ Chapter 2
12 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

13 Dismissal of an accusation or information underlying a conviction pursuant to
14 this section does not permit a person prohibited from holding public office as a
15 result of that conviction to hold public office.

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

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

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

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

30 (d) A person who petitions for a change of plea or setting aside of a verdict
31 under this section may be required to reimburse the court for the actual costs of
32 services rendered, whether or not the petition is granted and the records are sealed
33 or expunged, at a rate to be determined by the court not to exceed one hundred
34 twenty dollars (\$120), and to reimburse the county for the actual costs of services
35 rendered, whether or not the petition is granted and the records are sealed or
36 expunged, at a rate to be determined by the county board of supervisors not to
37 exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual
38 costs of services rendered, whether or not the petition is granted and the records
39 are sealed or expunged, at a rate to be determined by the city council not to exceed
40 one hundred twenty dollars (\$120). Ability to make this reimbursement shall be
41 determined by the court using the standards set forth in paragraph (2) of
42 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
43 eligibility under this section. The court may order reimbursement in any case in

1 which the petitioner appears to have the ability to pay, without undue hardship, all
2 or any portion of the costs for services established pursuant to this subdivision.

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

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

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

11 (g) Notwithstanding the above provisions or any other provision of law, the
12 Governor shall have the right to pardon a person convicted of a violation of
13 subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a,
14 Section 288.5, or subdivision (j) of Section 289, if there are extraordinary
15 circumstances.

16 **Comment.** Subdivision (a) of Section 1203.4 is amended to reflect nonsubstantive
17 reorganization of the statutes governing control of deadly weapons.

18 **Penal Code § 1203.4a (amended). Withdrawal of plea to misdemeanor**

19 SEC. ____. Section 1203.4a of the Penal Code is amended to read:

20 1203.4a. (a) Every defendant convicted of a misdemeanor and not granted
21 probation shall, at any time after the lapse of one year from the date of
22 pronouncement of judgment, if he or she has fully complied with and performed
23 the sentence of the court, is not then serving a sentence for any offense and is not
24 under charge of commission of any crime and has, since the pronouncement of
25 judgment, lived an honest and upright life and has conformed to and obeyed the
26 laws of the land, be permitted by the court to withdraw his or her plea of guilty or
27 nolo contendere and enter a plea of not guilty; or if he or she has been convicted
28 after a plea of not guilty, the court shall set aside the verdict of guilty; and in either
29 case the court shall thereupon dismiss the accusatory pleading against the
30 defendant, who shall thereafter be released from all penalties and disabilities
31 resulting from the offense of which he or she has been convicted, except as
32 provided in ~~Section 12021.1~~ Chapter 3 (commencing with Section 29900) of
33 Division 9 of Title 4 of Part 6 of this code or Section 13555 of the Vehicle Code.
34 The defendant shall be informed of the provisions of this section, either orally or
35 in writing, at the time he or she is sentenced. The defendant may make an
36 application and change of plea in person or by attorney, or by the probation officer
37 authorized in writing; provided, that in any subsequent prosecution of the
38 defendant for any other offense, the prior conviction may be pleaded and proved
39 and shall have the same effect as if relief had not been granted pursuant to this
40 section.

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

1 (b) Subdivision (a) does not apply to any misdemeanor falling within the
2 provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any
3 infraction.

4 (c) A person who petitions for a dismissal of a charge under this section may be
5 required to reimburse the county and the court for the cost of services rendered at
6 a rate to be determined by the county board of supervisors for the county and by
7 the court for the court, not to exceed sixty dollars (\$60), and to reimburse any city
8 for the cost of services rendered at a rate to be determined by the city council not
9 to exceed sixty dollars (\$60). Ability to make this reimbursement shall be
10 determined by the court using the standards set forth in paragraph (2) of
11 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
12 eligibility under this section. The court may order reimbursement in any case in
13 which the petitioner appears to have the ability to pay, without undue hardship, all
14 or any portion of the cost for services established pursuant to this subdivision.

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

18 **Comment.** Subdivision (a) of Section 1203.4a is amended to reflect nonsubstantive
19 reorganization of the statutes governing control of deadly weapons.

20 **Penal Code § 1210.1 (amended). Probation for nonviolent drug possession**

21 SEC. ____ . Section 1210.1 of the Penal Code is amended to read:

22 1210.1. (a) Notwithstanding any other provision of law, and except as provided
23 in subdivision (b), any person convicted of a nonviolent drug possession offense
24 shall receive probation. As a condition of probation the court shall require
25 participation in and completion of an appropriate drug treatment program. The
26 court shall impose appropriate drug testing as a condition of probation. The court
27 may also impose, as a condition of probation, participation in vocational training,
28 family counseling, literacy training and/or community service. A court may not
29 impose incarceration as an additional condition of probation. Aside from the
30 limitations imposed in this subdivision, the trial court is not otherwise limited in
31 the type of probation conditions it may impose. Probation shall be imposed by
32 suspending the imposition of sentence. No person shall be denied the opportunity
33 to benefit from the provisions of the Substance Abuse and Crime Prevention Act
34 of 2000 based solely upon evidence of a co-occurring psychiatric or
35 developmental disorder. To the greatest extent possible, any person who is
36 convicted of, and placed on probation pursuant to this section for a nonviolent
37 drug possession offense shall be monitored by the court through the use of a
38 dedicated court calendar and the incorporation of a collaborative court model of
39 oversight that includes close collaboration with treatment providers and probation,
40 drug testing commensurate with treatment needs, and supervision of progress
41 through review hearings.

1 In addition to any fine assessed under other provisions of law, the trial judge
2 may require any person convicted of a nonviolent drug possession offense who is
3 reasonably able to do so to contribute to the cost of his or her own placement in a
4 drug treatment program.

5 (b) Subdivision (a) shall not apply to any of the following:

6 (1) Any defendant who previously has been convicted of one or more violent or
7 serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of
8 Section 1192.7, respectively, unless the nonviolent drug possession offense
9 occurred after a period of five years in which the defendant remained free of both
10 prison custody and the commission of an offense that results in a felony conviction
11 other than a nonviolent drug possession offense, or a misdemeanor conviction
12 involving physical injury or the threat of physical injury to another person.

13 (2) Any defendant who, in addition to one or more nonviolent drug possession
14 offenses, has been convicted in the same proceeding of a misdemeanor not related
15 to the use of drugs or any felony.

16 (3) Any defendant who, while armed with a deadly weapon, with the intent to
17 use the same as a deadly weapon, unlawfully possesses or is under the influence of
18 any controlled substance identified in Section 11054, 11055, 11056, 11057, or
19 11058 of the Health and Safety Code.

20 (4) Any defendant who refuses drug treatment as a condition of probation.

21 (5) Any defendant who has two separate convictions for nonviolent drug
22 possession offenses, has participated in two separate courses of drug treatment
23 pursuant to subdivision (a), and is found by the court, by clear and convincing
24 evidence, to be unamenable to any and all forms of available drug treatment, as
25 defined in subdivision (b) of Section 1210. Notwithstanding any other provision of
26 law, the trial court shall sentence that defendant to 30 days in jail.

27 (c)(1) Any defendant who has previously been convicted of at least three non-
28 drug-related felonies for which the defendant has served three separate prison
29 terms within the meaning of subdivision (b) of Section 667.5 shall be presumed
30 eligible for treatment under subdivision (a). The court may exclude ~~such a~~ the
31 defendant from treatment under subdivision (a) where the court, pursuant to the
32 motion of the prosecutor or its own motion, finds that the defendant poses a
33 present danger to the safety of others and would not benefit from a drug treatment
34 program. The court shall, on the record, state its findings, and the reasons for those
35 findings.

36 (2) Any defendant who has previously been convicted of a misdemeanor or
37 felony at least five times within the prior 30 months shall be presumed to be
38 eligible for treatment under subdivision (a). The court may exclude ~~such a~~ the
39 defendant from treatment under subdivision (a) if the court, pursuant to the motion
40 of the prosecutor, or on its own motion, finds that the defendant poses a present
41 danger to the safety of others or would not benefit from a drug treatment program.
42 The court shall, on the record, state its findings and the reasons for those findings.

1 (d) Within seven days of an order imposing probation under subdivision (a), the
2 probation department shall notify the drug treatment provider designated to
3 provide drug treatment under subdivision (a). Within 30 days of receiving that
4 notice, the treatment provider shall prepare a treatment plan and forward it to the
5 probation department for distribution to the court and counsel. The treatment
6 provider shall provide to the probation department standardized treatment progress
7 reports, with minimum data elements as determined by the department, including
8 all drug testing results. At a minimum, the reports shall be provided to the court
9 every 90 days, or more frequently, as the court directs.

10 (1) If at any point during the course of drug treatment the treatment provider
11 notifies the probation department and the court that the defendant is unamenable to
12 the drug treatment being provided, but may be amenable to other drug treatments
13 or related programs, the probation department may move the court to modify the
14 terms of probation, or on its own motion, the court may modify the terms of
15 probation after a hearing to ensure that the defendant receives the alternative drug
16 treatment or program.

17 (2) If at any point during the course of drug treatment the treatment provider
18 notifies the probation department and the court that the defendant is unamenable to
19 the drug treatment provided and all other forms of drug treatment programs
20 pursuant to subdivision (b) of Section 1210, the probation department may move
21 to revoke probation. At the revocation hearing, if it is proved that the defendant is
22 unamenable to all drug treatment programs pursuant to subdivision (b) of Section
23 1210, the court may revoke probation.

24 (3) Drug treatment services provided by subdivision (a) as a required condition
25 of probation may not exceed 12 months, unless the court makes a finding
26 supported by the record, that the continuation of treatment services beyond 12
27 months is necessary for drug treatment to be successful. If ~~such a~~ that finding is
28 made, the court may order up to two six-month extensions of treatment services.
29 The provision of treatment services under the Substance Abuse and Crime
30 Prevention Act of 2000 shall not exceed 24 months.

31 (e)(1) At any time after completion of drug treatment and the terms of probation,
32 the court shall conduct a hearing, and if the court finds that the defendant
33 successfully completed drug treatment, and substantially complied with the
34 conditions of probation, including refraining from the use of drugs after the
35 completion of treatment, the conviction on which the probation was based shall be
36 set aside and the court shall dismiss the indictment, complaint, or information
37 against the defendant. In addition, except as provided in paragraphs (2) and (3),
38 both the arrest and the conviction shall be deemed never to have occurred. The
39 defendant may additionally petition the court for a dismissal of charges at any time
40 after completion of the prescribed course of drug treatment. Except as provided in
41 paragraph (2) or (3), the defendant shall thereafter be released from all penalties
42 and disabilities resulting from the offense of which he or she has been convicted.

1 (2) Dismissal of an indictment, complaint, or information pursuant to paragraph
2 (1) does not permit a person to own, possess, or have in his or her custody or
3 control any firearm capable of being concealed upon the person or prevent his or
4 her conviction under ~~Section 12021~~ Chapter 2 (commencing with Section 29800)
5 of Division 9 of Title 4 of Part 6.

6 (3) Except as provided below, after an indictment, complaint, or information is
7 dismissed pursuant to paragraph (1), the defendant may indicate in response to any
8 question concerning his or her prior criminal record that he or she was not arrested
9 or convicted for the offense. Except as provided below, a record pertaining to an
10 arrest or conviction resulting in successful completion of a drug treatment program
11 under this section may not, without the defendant's consent, be used in any way
12 that could result in the denial of any employment, benefit, license, or certificate.

13 Regardless of his or her successful completion of drug treatment, the arrest and
14 conviction on which the probation was based may be recorded by the Department
15 of Justice and disclosed in response to any peace officer application request or any
16 law enforcement inquiry. Dismissal of an information, complaint, or indictment
17 under this section does not relieve a defendant of the obligation to disclose the
18 arrest and conviction in response to any direct question contained in any
19 questionnaire or application for public office, for a position as a peace officer as
20 defined in Section 830, for licensure by any state or local agency, for contracting
21 with the California State Lottery, or for purposes of serving on a jury.

22 (f)(1) If probation is revoked pursuant to the provisions of this subdivision, the
23 defendant may be incarcerated pursuant to otherwise applicable law without
24 regard to the provisions of this section. The court may modify or revoke probation
25 if the alleged violation is proved.

26 (2) If a defendant receives probation under subdivision (a), and violates that
27 probation either by committing an offense that is not a nonviolent drug possession
28 offense, or by violating a non-drug-related condition of probation, and the state
29 moves to revoke probation, the court may remand the defendant for a period not
30 exceeding 30 days during which time the court may receive input from treatment,
31 probation, the state, and the defendant, and the court may conduct further hearings
32 as it deems appropriate to determine whether or not probation should be reinstated
33 under this section. If the court reinstates the defendant on probation, the court may
34 modify the treatment plan and any other terms of probation, and continue the
35 defendant in a treatment program under the Substance Abuse and Crime
36 Prevention Act of 2000. If the court reinstates the defendant on probation, the
37 court may, after receiving input from the treatment provider and probation, if
38 available, intensify or alter the treatment plan under subdivision (a), and impose
39 sanctions, including jail sanctions not exceeding 30 days, a tool to enhance
40 treatment compliance.

41 (3)(A) If a defendant receives probation under subdivision (a), and violates that
42 probation either by committing a nonviolent drug possession offense, or a
43 misdemeanor for simple possession or use of drugs or drug paraphernalia, being

1 present where drugs are used, or failure to register as a drug offender, or any
2 activity similar to those listed in subdivision (d) of Section 1210, or by violating a
3 drug-related condition of probation, and the state moves to revoke probation, the
4 court shall conduct a hearing to determine whether probation shall be revoked.
5 The trial court shall revoke probation if the alleged probation violation is proved
6 and the state proves by a preponderance of the evidence that the defendant poses a
7 danger to the safety of others. If the court does not revoke probation, it may
8 intensify or alter the drug treatment plan and in addition, if the violation does not
9 involve the recent use of drugs as a circumstance of the violation, including, but
10 not limited to, violations relating to failure to appear at treatment or court,
11 noncompliance with treatment, and failure to report for drug testing, the court may
12 impose sanctions including jail sanctions that may not exceed 48 hours of
13 continuous custody as a tool to enhance treatment compliance and impose other
14 changes in the terms and conditions of probation. The court shall consider, among
15 other factors, the seriousness of the violation, previous treatment compliance,
16 employment, education, vocational training, medical conditions, medical
17 treatment, including narcotics replacement treatment, and including the opinion of
18 the defendant's licensed and treating physician if immediately available and
19 presented at the hearing, child support obligations, and family responsibilities. The
20 court shall consider additional conditions of probation, which may include, but are
21 not limited to, community service and supervised work programs. If one of the
22 circumstances of the violation involves recent drug use, as well as other
23 circumstances of violation, and the circumstance of recent drug use is
24 demonstrated to the court by satisfactory evidence and a finding made on the
25 record, the court may, after receiving input from treatment and probation, if
26 available, direct the defendant to enter a licensed detoxification or residential
27 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
28 of facility, the court may order that the defendant be confined in a county jail for
29 detoxification purposes only, if the jail offers detoxification services, for a period
30 not to exceed 10 days. The detoxification services must provide narcotic
31 replacement therapy for those defendants presently actually receiving narcotic
32 replacement therapy.

33 (B) If a defendant receives probation under subdivision (a), and for the second
34 time violates that probation either by committing a nonviolent drug possession
35 offense, or a misdemeanor for simple possession or use of drugs or drug
36 paraphernalia, being present where drugs are used, or failure to register as a drug
37 offender, or any activity similar to those listed in subdivision (d) of Section 1210,
38 or by violating a drug-related condition of probation, and the state moves to
39 revoke probation, the court shall conduct a hearing to determine whether probation
40 shall be revoked. The trial court shall revoke probation if the alleged probation
41 violation is proved and the state proves by a preponderance of the evidence either
42 that the defendant poses a danger to the safety of others or is unamenable to drug
43 treatment. In determining whether a defendant is unamenable to drug treatment,

1 the court may consider, to the extent relevant, whether the defendant (i) has
2 committed a serious violation of rules at the drug treatment program, (ii) has
3 repeatedly committed violations of program rules that inhibit the defendant's
4 ability to function in the program, or (iii) has continually refused to participate in
5 the program or asked to be removed from the program. If the court does not
6 revoke probation, it may intensify or alter the drug treatment plan, and may, in
7 addition, if the violation does not involve the recent use of drugs as a circumstance
8 of the violation, including, but not limited to, violations relating to failure to
9 appear at treatment or court, noncompliance with treatment, and failure to report
10 for drug testing, impose sanctions including jail sanctions that may not exceed 120
11 hours of continuous custody as a tool to enhance treatment compliance and impose
12 other changes in the terms and conditions of probation. The court shall consider,
13 among other factors, the seriousness of the violation, previous treatment
14 compliance, employment, education, vocational training, medical conditions,
15 medical treatment, including narcotics replacement treatment, and including the
16 opinion of the defendant's licensed and treating physician if immediately available
17 and presented at the hearing, child support obligations, and family responsibilities.
18 The court shall consider additional conditions of probation, which may include,
19 but are not limited to, community service and supervised work programs. If one of
20 the circumstances of the violation involves recent drug use, as well as other
21 circumstances of violation, and the circumstance of recent drug use is
22 demonstrated to the court by satisfactory evidence and a finding made on the
23 record, the court may, after receiving input from treatment and probation, if
24 available, direct the defendant to enter a licensed detoxification or residential
25 treatment facility, and if there is no bed immediately available in the facility, the
26 court may order that the defendant be confined in a county jail for detoxification
27 purposes only, if the jail offers detoxification services, for a period not to exceed
28 10 days. Detoxification services must provide narcotic replacement therapy for
29 those defendants presently actually receiving narcotic replacement therapy.

30 (C) If a defendant receives probation under subdivision (a), and for the third or
31 subsequent time violates that probation either by committing a nonviolent drug
32 possession offense, or by violating a drug-related condition of probation, and the
33 state moves for a third or subsequent time to revoke probation, the court shall
34 conduct a hearing to determine whether probation shall be revoked. If the alleged
35 probation violation is proved, the defendant is not eligible for continued probation
36 under subdivision (a) unless the court determines that the defendant is not a danger
37 to the community and would benefit from further treatment under subdivision (a).
38 The court may then either intensify or alter the treatment plan under subdivision
39 (a) or transfer the defendant to a highly structured drug court. If the court
40 continues the defendant in treatment under subdivision (a), or drug court, the court
41 may impose appropriate sanctions including jail sanctions as the court deems
42 appropriate.

1 (D) If a defendant on probation at the effective date of this act for a nonviolent
2 drug possession offense violates that probation either by committing a nonviolent
3 drug possession offense, or a misdemeanor for simple possession or use of drugs
4 or drug paraphernalia, being present where drugs are used, or failure to register as
5 a drug offender, or any activity similar to those listed in subdivision (d) of Section
6 1210, or by violating a drug-related condition of probation, and the state moves to
7 revoke probation, the court shall conduct a hearing to determine whether probation
8 shall be revoked. The trial court shall revoke probation if the alleged probation
9 violation is proved and the state proves by a preponderance of the evidence that
10 the defendant poses a danger to the safety of others. If the court does not revoke
11 probation, it may modify or alter the treatment plan, and in addition, if the
12 violation does not involve the recent use of drugs as a circumstance of the
13 violation, including, but not limited to, violations relating to failure to appear at
14 treatment or court, noncompliance with treatment, and failure to report for drug
15 testing, the court may impose sanctions including jail sanctions that may not
16 exceed 48 hours of continuous custody as a tool to enhance treatment compliance
17 and impose other changes in the terms and conditions of probation. The court shall
18 consider, among other factors, the seriousness of the violation, previous treatment
19 compliance, employment, education, vocational training, medical conditions,
20 medical treatment, including narcotics replacement treatment, and including the
21 opinion of the defendant's licensed and treating physician if immediately available
22 and presented at the hearing, child support obligations, and family responsibilities.
23 The court shall consider additional conditions of probation, which may include,
24 but are not limited to, community service and supervised work programs. If one of
25 the circumstances of the violation involves recent drug use, as well as other
26 circumstances of violation, and the circumstance of recent drug use is
27 demonstrated to the court by satisfactory evidence and a finding made on the
28 record, the court may, after receiving input from treatment and probation, if
29 available, direct the defendant to enter a licensed detoxification or residential
30 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
31 of facility, the court may order that the defendant be confined in a county jail for
32 detoxification purposes only, if the jail offers detoxification services, for a period
33 not to exceed 10 days. The detoxification services must provide narcotic
34 replacement therapy for those defendants presently actually receiving narcotic
35 replacement therapy.

36 (E) If a defendant on probation at the effective date of this act for a nonviolent
37 drug possession offense violates that probation a second time either by committing
38 a nonviolent drug possession offense, or a misdemeanor for simple possession or
39 use of drugs or drug paraphernalia, being present where drugs are used, or failure
40 to register as a drug offender, or any activity similar to those listed in subdivision
41 (d) of Section 1210, or by violating a drug-related condition of probation, and the
42 state moves for a second time to revoke probation, the court shall conduct a
43 hearing to determine whether probation shall be revoked. The trial court shall

1 revoke probation if the alleged probation violation is proved and the state proves
2 by a preponderance of the evidence either that the defendant poses a danger to the
3 safety of others or that the defendant is unamenable to drug treatment. If the court
4 does not revoke probation, it may modify or alter the treatment plan, and in
5 addition, if the violation does not involve the recent use of drugs as a circumstance
6 of the violation, including, but not limited to, violations relating to failure to
7 appear at treatment or court, noncompliance with treatment, and failure to report
8 for drug testing, the court may impose sanctions including jail sanctions that may
9 not exceed 120 hours of continuous custody as a tool to enhance treatment
10 compliance and impose other changes in the terms and conditions of probation.
11 The court shall consider, among other factors, the seriousness of the violation,
12 previous treatment compliance, employment, education, vocational training,
13 medical conditions, medical treatment including narcotics replacement treatment,
14 and including the opinion of the defendant's licensed and treating physician if
15 immediately available and presented at the hearing, child support obligations, and
16 family responsibilities. The court shall consider additional conditions of probation,
17 which may include, but are not limited to, community service and supervised work
18 programs. If one of the circumstances of the violation involves recent drug use, as
19 well as other circumstances of violation, and the circumstance of recent drug use is
20 demonstrated to the court by satisfactory evidence and a finding made on the
21 record, the court may, after receiving input from treatment and probation, if
22 available, direct the defendant to enter a licensed detoxification or residential
23 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
24 of facility, the court may order that the defendant be confined in a county jail for
25 detoxification purposes only, if the jail offers detoxification services, for a period
26 not to exceed 10 days. The detoxification services must provide narcotic
27 replacement therapy for those defendants presently actually receiving narcotic
28 replacement therapy.

29 (F) If a defendant on probation at the effective date of this act for a nonviolent
30 drug offense violates that probation a third or subsequent time either by
31 committing a nonviolent drug possession offense, or by violating a drug-related
32 condition of probation, and the state moves for a third or subsequent time to
33 revoke probation, the court shall conduct a hearing to determine whether probation
34 shall be revoked. If the alleged probation violation is proved, the defendant is not
35 eligible for continued probation under subdivision (a), unless the court determines
36 that the defendant is not a danger to the community and would benefit from further
37 treatment under subdivision (a). The court may then either intensify or alter the
38 treatment plan under subdivision (a) or transfer the defendant to a highly
39 structured drug court. If the court continues the defendant in treatment under
40 subdivision (a), or drug court, the court may impose appropriate sanctions
41 including jail sanctions.

1 (g) The term “drug-related condition of probation” shall include a probationer’s
2 specific drug treatment regimen, employment, vocational training, educational
3 programs, psychological counseling, and family counseling.

4 **Comment.** Subdivision (e) of Section 1210.1 is amended to reflect nonsubstantive
5 reorganization of the statutes governing control of deadly weapons.

6 Subdivisions (c), (d), and (f) are amended to make technical revisions.

7 **Penal Code § 1601 (amended). Availability of outpatient status**

8 SEC. ____ . Section 1601 of the Penal Code is amended to read:

9 1601. (a) In the case of any person charged with and found incompetent on a
10 charge of, convicted of, or found not guilty by reason of insanity of murder,
11 mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which
12 the victim suffers intentionally inflicted great bodily injury, robbery or carjacking
13 with a deadly or dangerous weapon or in which the victim suffers great bodily
14 injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph
15 (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4)
16 of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a
17 violation of Section 220 in which the victim suffers great bodily injury, a violation
18 of Section 288, a violation of Section ~~12303.1, 12303.2, 12303.3, 12308, 12309,~~
19 ~~or 12310~~ 18715, 18725, 18740, 18745, 18750, or 18755, or any felony involving
20 death, great bodily injury, or an act which poses a serious threat of bodily harm to
21 another person, outpatient status under this title shall not be available until that
22 person has actually been confined in a state hospital or other facility for 180 days
23 or more after having been committed under the provisions of law specified in
24 Section 1600.

25 (b) In the case of any person charged with, and found incompetent on a charge
26 of, or convicted of, any misdemeanor or any felony other than those described in
27 subdivision (a), or found not guilty of any misdemeanor by reason of insanity,
28 outpatient status under this title may be granted by the court prior to actual
29 confinement in a state hospital or other treatment facility under the provisions of
30 law specified in Section 1600.

31 **Comment.** Subdivision (a) of Section 1601 is amended to reflect nonsubstantive
32 reorganization of the statutes governing control of deadly weapons.

33 **Penal Code § 2933.5 (amended). Persons ineligible for credit on term of imprisonment**

34 SEC. ____ . Section 2933.5 of the Penal Code is amended to read:

35 2933.5. (a)(1) Notwithstanding any other provision of law, every person who is
36 convicted of any felony offense listed in paragraph (2), and who previously has
37 been convicted two or more times, on charges separately brought and tried, and
38 who previously has served two or more separate prior prison terms, as defined in
39 subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2),
40 shall be ineligible to earn credit on his or her term of imprisonment pursuant to
41 this chapter.

- 1 (2) As used in this subdivision, “felony offense” includes any of the following:
2 (A) Murder, as defined in Sections 187 and 189.
3 (B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.
4 (C) Mayhem as defined in Section 203.
5 (D) Aggravated mayhem, as defined in Section 205.
6 (E) Kidnapping, as defined in Section 207, 209, or 209.5.
7 (F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as
8 described in Section 244.
9 (G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
10 paragraph (1) or (4) of subdivision (a) of Section 262.
11 (H) Sodomy by means of force, violence, duress, menace or fear of immediate
12 and unlawful bodily injury on the victim or another person, as described in
13 subdivision (c) of Section 286.
14 (I) Sodomy while voluntarily acting in concert, as described in subdivision (d)
15 of Section 286.
16 (J) Lewd or lascivious acts on a child under the age of 14 years, as described in
17 subdivision (b) of Section 288.
18 (K) Oral copulation by means of force, violence, duress, menace, or fear of
19 immediate and unlawful bodily injury on the victim or another person, as
20 described in subdivision (c) of Section 288a.
21 (L) Continuous sexual abuse of a child, as described in Section 288.5.
22 (M) Sexual penetration, as described in subdivision (a) of Section 289.
23 (N) Exploding a destructive device or explosive with intent to injure, as
24 described in Section ~~12303.3~~ 18740, with intent to murder, as described in Section
25 ~~12308~~ 18745, or resulting in great bodily injury or mayhem, as described in
26 Section ~~12309~~ 18750.
27 (O) Any felony in which the defendant personally inflicted great bodily injury,
28 as provided in Section 12022.53 or 12022.7.
29 (b) A prior conviction of an offense listed in subdivision (a) shall include a
30 conviction in another jurisdiction for an offense which includes all of the elements
31 of the particular felony as defined under California law.
32 (c) This section shall apply whenever the present felony is committed on or after
33 the effective date of this section, regardless of the date of commission of the prior
34 offense or offenses resulting in credit-earning ineligibility.
35 (d) This section shall be in addition to, and shall not preclude the imposition of,
36 any applicable sentence enhancement terms, or probation ineligibility and habitual
37 offender provisions authorized under any other section.
38 **Comment.** Subdivision (a) of Section 2933.5 is amended to reflect nonsubstantive
39 reorganization of the statutes governing control of deadly weapons.
40 For guidance in applying this section, see Section 16015 (determining existence of prior
41 conviction).

1 **Penal Code § 2962 (amended). Treatment by Department of Mental Health as parole**
2 **condition**

3 SEC. ____ . Section 2962 of the Penal Code is amended to read:

4 2962. As a condition of parole, a prisoner who meets the following criteria shall
5 be required to be treated by the State Department of Mental Health, and the State
6 Department of Mental Health shall provide the necessary treatment:

7 (a) The prisoner has a severe mental disorder that is not in remission or cannot
8 be kept in remission without treatment.

9 The term “severe mental disorder” means an illness or disease or condition that
10 substantially impairs the person’s thought, perception of reality, emotional
11 process, or judgment; or which grossly impairs behavior; or that demonstrates
12 evidence of an acute brain syndrome for which prompt remission, in the absence
13 of treatment, is unlikely. The term “severe mental disorder” as used in this section
14 does not include a personality or adjustment disorder, epilepsy, mental retardation
15 or other developmental disabilities, or addiction to or abuse of intoxicating
16 substances.

17 The term “remission” means a finding that the overt signs and symptoms of the
18 severe mental disorder are controlled either by psychotropic medication or
19 psychosocial support. A person “cannot be kept in remission without treatment” if
20 during the year prior to the question being before the Board of Prison Terms or a
21 trial court, he or she has been in remission and he or she has been physically
22 violent, except in self-defense, or he or she has made a serious threat of substantial
23 physical harm upon the person of another so as to cause the target of the threat to
24 reasonably fear for his or her safety or the safety of his or her immediate family, or
25 he or she has intentionally caused property damage, or he or she has not
26 voluntarily followed the treatment plan. In determining if a person has voluntarily
27 followed the treatment plan, the standard shall be whether the person has acted as
28 a reasonable person would in following the treatment plan.

29 (b) The severe mental disorder was one of the causes of or was an aggravating
30 factor in the commission of a crime for which the prisoner was sentenced to
31 prison.

32 (c) The prisoner has been in treatment for the severe mental disorder for 90 days
33 or more within the year prior to the prisoner’s parole or release.

34 (d)(1) Prior to release on parole, the person in charge of treating the prisoner and
35 a practicing psychiatrist or psychologist from the State Department of Mental
36 Health have evaluated the prisoner at a facility of the Department of Corrections,
37 and a chief psychiatrist of the Department of Corrections has certified to the Board
38 of Prison Terms that the prisoner has a severe mental disorder, that the disorder is
39 not in remission, or cannot be kept in remission without treatment, that the severe
40 mental disorder was one of the causes or was an aggravating factor in the
41 prisoner’s criminal behavior, that the prisoner has been in treatment for the severe
42 mental disorder for 90 days or more within the year prior to his or her parole
43 release day, and that by reason of his or her severe mental disorder the prisoner

1 represents a substantial danger of physical harm to others. For prisoners being
2 treated by the State Department of Mental Health pursuant to Section 2684, the
3 certification shall be by a chief psychiatrist of the Department of Corrections, and
4 the evaluation shall be done at a state hospital by the person at the state hospital in
5 charge of treating the prisoner and a practicing psychiatrist or psychologist from
6 the Department of Corrections.

7 (2) If the professionals doing the evaluation pursuant to paragraph (1) do not
8 concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is
9 not in remission or cannot be kept in remission without treatment, or (C) that the
10 severe mental disorder was a cause of, or aggravated, the prisoner's criminal
11 behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison
12 Terms pursuant to this paragraph, then the Board of Prison Terms shall order a
13 further examination by two independent professionals, as provided for in Section
14 2978.

15 (3) Only if both independent professionals who evaluate the prisoner pursuant to
16 paragraph (2) concur with the chief psychiatrist's certification of the issues
17 described in paragraph (2), shall this subdivision be applicable to the prisoner. The
18 professionals appointed pursuant to Section 2978 shall inform the prisoner that the
19 purpose of their examination is not treatment but to determine if the prisoner
20 meets certain criteria to be involuntarily treated as a mentally disordered offender.
21 It is not required that the prisoner appreciate or understand that information.

22 (e) The crime referred to in subdivision (b) meets both of the following criteria:

23 (1) The defendant received a determinate sentence pursuant to Section 1170 for
24 the crime.

25 (2) The crime is one of the following:

26 (A) Voluntary manslaughter.

27 (B) Mayhem.

28 (C) Kidnapping in violation of Section 207.

29 (D) Any robbery wherein it was charged and proved that the defendant
30 personally used a deadly or dangerous weapon, as provided in subdivision (b) of
31 Section 12022, in the commission of that robbery.

32 (E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and
33 proved that the defendant personally used a deadly or dangerous weapon, as
34 provided in subdivision (b) of Section 12022, in the commission of the carjacking.

35 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
36 paragraph (1) or (4) of subdivision (a) of Section 262.

37 (G) Sodomy by force, violence, duress, menace, or fear of immediate and
38 unlawful bodily injury on the victim or another person.

39 (H) Oral copulation by force, violence, duress, menace, or fear of immediate and
40 unlawful bodily injury on the victim or another person.

41 (I) Lewd acts on a child under the age of 14 years in violation of Section 288.

42 (J) Continuous sexual abuse in violation of Section 288.5.

1 (K) The offense described in subdivision (a) of Section 289 where the act was
2 accomplished against the victim's will by force, violence, duress, menace, or fear
3 of immediate and unlawful bodily injury on the victim or another person.

4 (L) Arson in violation of subdivision (a) of Section 451, or arson in violation of
5 any other provision of Section 451 or in violation of Section 455 where the act
6 posed a substantial danger of physical harm to others.

7 (M) Any felony in which the defendant used a firearm which use was charged
8 and proved as provided in Section 12022.5, 12022.53, or 12022.55.

9 (N) A violation of Section ~~12308~~ 18745.

10 (O) Attempted murder.

11 (P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the
12 prisoner used force or violence, or caused serious bodily injury as defined in
13 paragraph (4) of subdivision (f) of Section 243.

14 (Q) A crime in which the perpetrator expressly or impliedly threatened another
15 with the use of force or violence likely to produce substantial physical harm in
16 such a manner that a reasonable person would believe and expect that the force or
17 violence would be used. For purposes of this subparagraph, substantial physical
18 harm shall not require proof that the threatened act was likely to cause great or
19 serious bodily injury.

20 (f) As used in this chapter, "substantial danger of physical harm" does not
21 require proof of a recent overt act.

22 **Comment.** Subdivision (e) of Section 2962 is amended to reflect nonsubstantive
23 reorganization of the statutes governing control of deadly weapons.

24 **Penal Code § 3057 (amended). Confinement pursuant to parole revocation**

25 SEC. _____. Section 3057 of the Penal Code is amended to read:

26 3057. (a) Confinement pursuant to a revocation of parole in the absence of a
27 new conviction and commitment to prison under other provisions of law, shall not
28 exceed 12 months, except as provided in subdivision (c).

29 (b) Upon completion of confinement pursuant to parole revocation without a
30 new commitment to prison, the inmate shall be released on parole for a period
31 which shall not extend beyond that portion of the maximum statutory period of
32 parole specified by Section 3000 which was unexpired at the time of each
33 revocation.

34 (c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5
35 upon confinement pursuant to a parole revocation, the parole authority may extend
36 the confinement pursuant to parole revocation for a maximum of an additional 12
37 months for subsequent acts of misconduct committed by the parolee while
38 confined pursuant to that parole revocation. Upon a finding of good cause to
39 believe that a parolee has committed a subsequent act of misconduct and utilizing
40 procedures governing parole revocation proceedings, the parole authority may
41 extend the period of confinement pursuant to parole revocation as follows: (1) not
42 more than 180 days for an act punishable as a felony, whether or not prosecution is

1 undertaken, (2) not more than 90 days for an act punishable as a misdemeanor,
2 whether or not prosecution is undertaken, and (3) not more than 30 days for an act
3 defined as a serious disciplinary offense pursuant to subdivision (a) of Section
4 2932.

5 (d)(1) Except for parolees specified in paragraph (2), any revocation period
6 imposed under subdivision (a) may be reduced in the same manner and to the
7 same extent as a term of imprisonment may be reduced by worktime credits under
8 Section 2933. Worktime credit must be earned and may be forfeited pursuant to
9 the provisions of Section 2932.

10 Worktime credit forfeited shall not be restored.

11 (2) The following parolees shall not be eligible for credit under this subdivision:

12 (A) Parolees who are sentenced under Section 1168 with a maximum term of
13 life imprisonment.

14 (B) Parolees who violated a condition of parole relating to association with
15 specified persons, entering prohibited areas, attendance at parole outpatient clinics,
16 or psychiatric attention.

17 (C) Parolees who were revoked for conduct described in, or that could be
18 prosecuted under any of the following sections, whether or not prosecution is
19 undertaken: Section 189, Section 191.5, subdivision (a) of Section 192,
20 subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220,
21 subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
22 of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph
23 (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of
24 Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of
25 Section 289, 347, or 404, subdivision (a) of Section 451, Section ~~12020, 12021~~
26 ~~12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or 25400, Chapter~~
27 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, any
28 provision listed in Section 16590, or Section 664 for any attempt to engage in
29 conduct described in or that could be prosecuted under any of the above-
30 mentioned sections.

31 (D) Parolees who were revoked for any reason if they had been granted parole
32 after conviction of any of the offenses specified in subparagraph (C).

33 (E) Parolees who the parole authority finds at a revocation hearing to be
34 unsuitable for reduction of the period of confinement because of the circumstances
35 and gravity of the parole violation, or because of prior criminal history.

36 **Comment.** Subdivision (d) of Section 3057 is amended to reflect nonsubstantive
37 reorganization of the statutes governing control of deadly weapons. That subdivision is also
38 amended to eliminate an obsolete cross-reference to former Section 12560, which was repealed.
39 See 1990 Cal. Stat. ch. 9, § 14.

40 **Penal Code § 4852.03 (amended). Period of rehabilitation**

41 SEC. ____ . Section 4852.03 of the Penal Code is amended to read:

1 4852.03. (a) The period of rehabilitation shall begin to run upon the discharge of
2 the petitioner from custody due to his or her completion of the term to which he or
3 she was sentenced or upon his or her release on parole or probation, whichever is
4 sooner. For purposes of this chapter, the period of rehabilitation shall constitute
5 five years' residence in this state, plus a period of time determined by the
6 following rules:

7 (1) To the five years there shall be added four years in the case of any person
8 convicted of violating Section 187, 209, 219, 4500 or ~~42340~~ 18755 of this code, or
9 subdivision (a) of Section 1672 of the Military and Veterans Code, or of
10 committing any other offense which carries a life sentence.

11 (2) To the five years there shall be added five years in the case of any person
12 convicted of committing any offense or attempted offense for which sex offender
13 registration is required pursuant to Section 290, except for convictions for
14 violations of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3,
15 311.10, or 314. For those convictions, two years shall be added to the five years
16 imposed by this section.

17 (3) To the five years there shall be added two years in the case of any person
18 convicted of committing any offense that is not listed in paragraph (1) or
19 paragraph (2) and that does not carry a life sentence.

20 (4) The trial court hearing the application for the certificate of rehabilitation
21 may, if the defendant was ordered to serve consecutive sentences, order that his or
22 her statutory period of rehabilitation be extended for an additional period of time
23 which when combined with the time already served will not exceed the period
24 prescribed by statute for the sum of the maximum penalties for all the crimes.

25 (5) Any person who was discharged after completion of his or her term or was
26 released on parole before May 13, 1943, is not subject to the periods of
27 rehabilitation set forth in these rules.

28 (b) Unless and until the period of rehabilitation, as stipulated in this section, has
29 passed, the petitioner shall be ineligible to file his or her petition for a certificate of
30 rehabilitation with the court. Any certificate of rehabilitation that is issued and
31 under which the petitioner has not fulfilled the requirements of this chapter shall
32 be void.

33 (c) A change of residence within this state does not interrupt the period of
34 rehabilitation prescribed by this section.

35 **Comment.** Subdivision (a) of Section 4852.03 is amended to reflect nonsubstantive
36 reorganization of the statutes governing control of deadly weapons.

37 For guidance in applying this section, see Section 16015 (determining existence of prior
38 conviction).

39 **Penal Code § 4852.17 (amended). Certificate of rehabilitation or grant of pardon**

40 SEC. ____ . Section 4852.17 of the Penal Code is amended to read:

41 4852.17. Whenever a person is issued a certificate of rehabilitation or granted a
42 pardon from the Governor under this chapter, the fact shall be immediately

1 reported to the Department of Justice by the court, Governor, officer, or
2 governmental agency by whose official action the certificate is issued or the
3 pardon granted. The Department of Justice shall immediately record the facts so
4 reported on the former criminal record of the person, and transmit those facts to
5 the Federal Bureau of Investigation at Washington, D.C. When the criminal record
6 is thereafter reported by the department, it shall also report the fact that the person
7 has received a certificate of rehabilitation, or pardon, or both.

8 Whenever a person is granted a full and unconditional pardon by the Governor,
9 based upon a certificate of rehabilitation, the pardon shall entitle the person to
10 exercise thereafter all civil and political rights of citizenship, including but not
11 limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of
12 firearm that may lawfully be owned and possessed by other citizens; except that
13 this right shall not be restored, and Sections ~~12001 and 12021~~ 17800 and 23510
14 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6
15 shall apply, if the person was ever convicted of a felony involving the use of a
16 dangerous weapon.

17 **Comment.** Section 4852.17 is amended to reflect nonsubstantive reorganization of the statutes
18 governing control of deadly weapons.

19 **Penal Code § 4854 (amended). Effect of pardon on rights relating to firearms**

20 SEC. _____. Section 4854 of the Penal Code is amended to read:

21 4854. In the granting of a pardon to a person, the Governor may provide that the
22 person is entitled to exercise the right to own, possess and keep any type of
23 firearm that may lawfully be owned and possessed by other citizens; except that
24 this right shall not be restored, and Sections ~~12001 and 12021~~ 17800 and 23510
25 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6
26 shall apply, if the person was ever convicted of a felony involving the use of a
27 dangerous weapon.

28 **Comment.** Section 4854 is amended to reflect nonsubstantive reorganization of the statutes
29 governing control of deadly weapons.

30 **Penal Code § 11105 (amended). State and federal summary criminal history information**
31 **furnished by Department of Justice**

32 SEC. _____. Section 11105 of the Penal Code is amended to read:

33 11105. (a)(1) The Department of Justice shall maintain state summary criminal
34 history information.

35 (2) As used in this section:

36 (A) “State summary criminal history information” means the master record of
37 information compiled by the Attorney General pertaining to the identification and
38 criminal history of any person, such as name, date of birth, physical description,
39 fingerprints, photographs, date of arrests, arresting agencies and booking numbers,
40 charges, dispositions, and similar data about the person.

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

6 (b) The Attorney General shall furnish state summary criminal history
7 information to any of the following, if needed in the course of their duties,
8 provided that when information is furnished to assist an agency, officer, or official
9 of state or local government, a public utility, or any other entity, in fulfilling
10 employment, certification, or licensing duties, Chapter 1321 of the Statutes of
11 1974 and Section 432.7 of the Labor Code shall apply:

12 (1) The courts of the state.

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

16 (3) District attorneys of the state.

17 (4) Prosecuting city attorneys of any city within the state.

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

21 (6) Probation officers of the state.

22 (7) Parole officers of the state.

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

26 (9) A public defender or attorney of record when representing a person in a
27 criminal case, or parole revocation or revocation extension proceeding, and if
28 authorized access by statutory or decisional law.

29 (10) Any agency, officer, or official of the state if the criminal history
30 information is required to implement a statute or regulation that expressly refers to
31 specific criminal conduct applicable to the subject person of the state summary
32 criminal history information, and contains requirements or exclusions, or both,
33 expressly based upon that specified criminal conduct. The agency, officer, or
34 official of the state authorized by this paragraph to receive state summary criminal
35 history information may also transmit fingerprint images and related information
36 to the Department of Justice to be transmitted to the Federal Bureau of
37 Investigation.

38 (11) Any city or county, city and county, district, or any officer or official
39 thereof if access is needed in order to assist that agency, officer, or official in
40 fulfilling employment, certification, or licensing duties, and if the access is
41 specifically authorized by the city council, board of supervisors, or governing
42 board of the city, county, or district if the criminal history information is required
43 to implement a statute, ordinance, or regulation that expressly refers to specific

1 criminal conduct applicable to the subject person of the state summary criminal
2 history information, and contains requirements or exclusions, or both, expressly
3 based upon that specified criminal conduct. The city or county, city and county,
4 district, or the officer or official thereof authorized by this paragraph may also
5 transmit fingerprint images and related information to the Department of Justice to
6 be transmitted to the Federal Bureau of Investigation.

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

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

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

17 (15) Any managing or supervising correctional officer of a county jail or other
18 county correctional facility.

19 (16) Any humane society, or society for the prevention of cruelty to animals, for
20 the specific purpose of complying with Section 14502 of the Corporations Code
21 for the appointment of level 1 humane officers.

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

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

39 (19) The court of a tribe, or court of a consortium of tribes, that has entered into
40 an agreement with the state pursuant to Section 10553.1 of the Welfare and
41 Institutions Code. This information may be used only for the purposes specified in
42 Section 16504.5 of the Welfare and Institutions Code and for tribal approval or
43 tribal licensing of foster care or adoptive homes. Article 6 (commencing with

1 Section 11140) shall apply to officers, members, and employees of a tribal court
2 receiving criminal record offender information pursuant to this section.

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

14 (21) An officer providing conservatorship investigations pursuant to Sections
15 5351, 5354, and 5356 of the Welfare and Institutions Code.

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

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

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

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

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

33 (3) To an illegal dumping enforcement officer as defined in subdivision (j) of
34 Section 830.7.

35 (4) To a peace officer of another country.

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

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

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

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

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

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

18 If the Attorney General supplies the data pursuant to this paragraph, the
19 Attorney General shall furnish a copy of the data to the current or prospective
20 employee to whom the data relates.

21 Any information obtained from the state summary criminal history is
22 confidential and the receiving public utility or cable corporation shall not disclose
23 its contents, other than for the purpose for which it was acquired. The state
24 summary criminal history information in the possession of the public utility or
25 cable corporation and all copies made from it shall be destroyed not more than 30
26 days after employment or promotion or transfer is denied or granted, except for
27 those cases where a current or prospective employee is out on bail or on his or her
28 own recognizance pending trial, in which case the state summary criminal history
29 information and all copies shall be destroyed not more than 30 days after the case
30 is resolved.

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

39 Nothing in this section shall be construed as imposing any duty upon public
40 utilities or cable corporations to request state summary criminal history
41 information on any current or prospective employees.

42 (B) For purposes of this paragraph, "cable corporation" means any corporation
43 or firm that transmits or provides television, computer, or telephone services by

1 cable, digital, fiber optic, satellite, or comparable technology to subscribers for a
2 fee.

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

9 (D)(i) Authority for a cable corporation to request state or federal-level criminal
10 history information under this paragraph shall commence July 1, 2005.

11 (ii) Authority for a public utility to request federal-level criminal history
12 information under this paragraph shall commence July 1, 2005.

13 (11) To any campus of the California State University or the University of
14 California, or any four-year college or university accredited by a regional
15 accreditation organization approved by the United States Department of
16 Education, if needed in conjunction with an application for admission by a
17 convicted felon to any special education program for convicted felons, including,
18 but not limited to, university alternatives and halfway houses. Only conviction
19 information shall be furnished. The college or university may require the
20 convicted felon to be fingerprinted, and any inquiry to the department under this
21 section shall include the convicted felon's fingerprints and any other information
22 specified by the department.

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

30 (e) Whenever state summary criminal history information is furnished as the
31 result of an application and is to be used for employment, licensing, or
32 certification purposes, the Department of Justice may charge the person or entity
33 making the request a fee that it determines to be sufficient to reimburse the
34 department for the cost of furnishing the information. In addition, the Department
35 of Justice may add a surcharge to the fee to fund maintenance and improvements
36 to the systems from which the information is obtained. Notwithstanding any other
37 law, any person or entity required to pay a fee to the department for information
38 received under this section may charge the applicant a fee sufficient to reimburse
39 the person or entity for this expense. All moneys received by the department
40 pursuant to this section, Sections 11105.3 and ~~12054~~ 26190 of the Penal Code, and
41 Section 13588 of the Education Code shall be deposited in a special account in the
42 General Fund to be available for expenditure by the department to offset costs
43 incurred pursuant to those sections and for maintenance and improvements to the

1 systems from which the information is obtained upon appropriation by the
2 Legislature.

3 (f) Whenever there is a conflict, the processing of criminal fingerprints and
4 fingerprints of applicants for security guard or alarm agent registrations or
5 firearms qualification permits submitted pursuant to Section 7583.9, 7583.23,
6 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the
7 processing of other applicant fingerprints.

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

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

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

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

23 (k)(1) This subdivision shall apply whenever state or federal summary criminal
24 history information is furnished by the Department of Justice as the result of an
25 application by an authorized agency or organization and the information is to be
26 used for peace officer employment or certification purposes. As used in this
27 subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section
28 830) of Title 3 of Part 2.

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

32 (A) Every conviction rendered against the applicant.

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

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

40 (D) Every successful diversion.

41 (l)(1) This subdivision shall apply whenever state or federal summary criminal
42 history information is furnished by the Department of Justice as the result of an
43 application by a criminal justice agency or organization as defined in Section

1 13101 of the Penal Code, and the information is to be used for criminal justice
2 employment, licensing, or certification purposes.

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

6 (A) Every conviction rendered against the applicant.

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

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

17 (m)(1) This subdivision shall apply whenever state or federal summary criminal
18 history information is furnished by the Department of Justice as the result of an
19 application by an authorized agency or organization pursuant to Section 1522,
20 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that
21 incorporates the criteria of any of those sections or this subdivision by reference,
22 and the information is to be used for employment, licensing, or certification
23 purposes.

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

27 (A) Every conviction of an offense rendered against the applicant.

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

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

37 (3) Notwithstanding the requirements of the sections referenced in paragraph (1)
38 of this subdivision, the Department of Justice shall not disseminate information
39 about an arrest subsequently deemed a detention or an arrest that resulted in either
40 the successful completion of a diversion program or exoneration.

41 (n)(1) This subdivision shall apply whenever state or federal summary criminal
42 history information, to be used for employment, licensing, or certification
43 purposes, is furnished by the Department of Justice as the result of an application

1 by an authorized agency, organization, or individual pursuant to any of the
2 following:

3 (A) Paragraph (9) of subdivision (c), when the information is to be used by a
4 cable corporation.

5 (B) Section 11105.3 or 11105.4.

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

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

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

14 (A) Every conviction rendered against the applicant for a violation or attempted
15 violation of any offense specified in subdivision (a) of Section 15660 of the
16 Welfare and Institutions Code. However, with the exception of those offenses for
17 which registration is required pursuant to Section 290, the Department of Justice
18 shall not disseminate information pursuant to this subdivision unless the
19 conviction occurred within 10 years of the date of the agency's request for
20 information or the conviction is over 10 years old but the subject of the request
21 was incarcerated within 10 years of the agency's request for information.

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

26 (o)(1) This subdivision shall apply whenever state or federal summary criminal
27 history information is furnished by the Department of Justice as the result of an
28 application by an authorized agency or organization pursuant to Section 261 or
29 550 of the Financial Code, or any statute that incorporates the criteria of either of
30 those sections or this subdivision by reference, and the information is to be used
31 for employment, licensing, or certification purposes.

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

35 (A) Every conviction rendered against the applicant for a violation or attempted
36 violation of any offense specified in Section 550 of the Financial Code.

37 (B) Every arrest for a violation or attempted violation of an offense specified in
38 Section 550 of the Financial Code for which the applicant is presently awaiting
39 trial, whether the applicant is incarcerated or has been released on bail or on his or
40 her own recognizance pending trial.

41 (p)(1) This subdivision shall apply whenever state or federal criminal history
42 information is furnished by the Department of Justice as the result of an
43 application by an agency, organization, or individual not defined in subdivision

1 (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to
2 Section 11105.3, or any statute that incorporates the criteria of that section or this
3 subdivision by reference, and the information is to be used for employment,
4 licensing, or certification purposes.

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

8 (A) Every conviction rendered against the applicant.

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

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

18 (r) Nothing in this section shall be construed to mean that the Department of
19 Justice shall cease compliance with any other statutory notification requirements.

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

22 **Comment.** Subdivision (e) of Section 11105 is amended to reflect nonsubstantive
23 reorganization of the statutes governing control of deadly weapons.

24 **Penal Code § 11105.03 (amended). Criminal summary history information**

25 SEC. ____. Section 11105.03 of the Penal Code is amended to read:

26 11105.03. (a) Subject to the requirements and conditions set forth in this section
27 and Section 11105, local law enforcement agencies are hereby authorized to
28 provide state criminal summary history information obtained through CLETS for
29 the purpose of screening prospective participants and prospective and current staff
30 of a regional, county, city, or other local public housing authority, at the request of
31 the chief executive officer of the authority or his or her designee, upon a showing
32 by that authority that the authority manages a Section 8 housing program pursuant
33 to federal law (U.S. Housing Act of 1937), or operates housing at which children
34 under the age of 18 years reside or operates housing for persons categorized as
35 aged, blind, or disabled.

36 (b) The following requirements shall apply to information released by local law
37 enforcement agencies pursuant to subdivision (a):

38 (1) Local law enforcement agencies shall not release any information unless it
39 relates to a conviction for a serious felony, as defined in subdivision (c) of Section
40 1192.7, a conviction for any offense punishable under Section 273.5, 422.6, 422.7,
41 422.75, 422.9, or 1170.75, 12020, 12021 or 12021.1 or under Chapter 2
42 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900)

1 of Division 9 of Title 4 of Part 6, or under any provision listed in Section 16590, a
2 conviction under Section 273.6 that involves a violation of a protective order, as
3 defined in Section 6218 of the Family Code, or a conviction for any felony offense
4 that involves controlled substances or alcoholic beverages, or any felony offense
5 that involves any activity related to controlled substances or alcoholic beverages,
6 or a conviction for any offense that involves domestic violence, as defined in
7 Section 13700.

8 (2) Local law enforcement agencies shall not release any information concerning
9 any arrest for an offense that did not result in a conviction.

10 (3) Local law enforcement agencies shall not release any information concerning
11 any offense committed by a person who was under 18 years of age at the time he
12 or she committed the offense.

13 (4) Local law enforcement agencies shall release any information concerning
14 any conviction or release from custody that occurred within 10 years of the date on
15 which the request for information is submitted to the Attorney General, unless the
16 conviction was based upon a felony offense that involved controlled substances or
17 alcoholic beverages or a felony offense that involved any activity related to
18 controlled substances or alcoholic beverages. Where a conviction was based on
19 any of these felony offenses, local law enforcement agencies shall release any
20 information concerning this conviction if the conviction occurred within five years
21 of the date on which a request for the information was submitted.

22 (5) Notwithstanding paragraph (4), if information that meets the requirements of
23 paragraphs (2) to (4), inclusive, is located and the information reveals a conviction
24 of an offense specified in paragraph (1), local law enforcement agencies shall
25 release all summary criminal history information concerning the person whether or
26 not the information meets the requirements of paragraph (4), provided, however,
27 that the information meets the requirements of paragraphs (1) to (3), inclusive.

28 (6) Information released to the local public housing authority pursuant to this
29 section shall also be released to parole or probation officers at the same time.

30 (c) State summary criminal history information shall be used by the chief
31 executive officer of the housing authority or a designee only for purposes of
32 identifying prospective participants in subsidized programs and prospective and
33 current staff who have access to residences, whose criminal history is likely to
34 pose a risk to children under the age of 18 years or persons categorized as aged,
35 blind, or disabled living in the housing operated by the authority.

36 (d) If a housing authority obtains summary criminal history information for the
37 purpose of screening a prospective participant pursuant to this section, it shall
38 review and evaluate that information in the context of other available information
39 and shall not evaluate the person's suitability as a prospective participant based
40 solely on his or her past criminal history.

41 (e) If a housing authority determines that a prospective participant is not eligible
42 as a resident, it shall promptly notify him or her of the basis for its determination
43 and, upon request, shall provide him or her within a reasonable time after the

1 determination is made with an opportunity for an informal hearing on the
2 determination in accordance with Section 960.207 of Title 24 of the Code of
3 Federal Regulations.

4 (f) Any information obtained from state summary criminal history information
5 pursuant to this section is confidential and the recipient public housing authority
6 shall not disclose or use the information for any purpose other than that authorized
7 by this section. The state summary criminal history information in the possession
8 of the authority and all copies made from it shall be destroyed not more than 30
9 days after the authority's final decision whether to act on the housing status of the
10 individual to whom the information relates.

11 (g) The local public housing authority receiving state summary criminal history
12 information pursuant to this section shall adopt regulations governing the receipt,
13 maintenance, and use of the information. The regulations shall include provisions
14 that require notice that the authority has access to criminal records of participants
15 and employees who have access to programs.

16 (h) Use of this information is to be consistent with Title 24 of the Code of
17 Federal Regulations and the current regulations adopted by the housing authority
18 using the information.

19 (i) Nothing in this section shall be construed to require a housing authority to
20 request and review an applicant's criminal history.

21 (j) The California Housing Authorities Association, after compiling data from
22 all public housing authorities that receive summary criminal information pursuant
23 to this chapter, shall report its findings based upon this data to the Legislature
24 prior to January 1, 2000.

25 **Comment.** Subdivision (b) of Section 11105.03 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 For guidance in applying this section, see Section 16015 (determining existence of prior
28 conviction).

29 **Penal Code § 11106 (amended). Retention of records**

30 SEC. ____ . Section 11106 of the Penal Code is amended to read:

31 11106. (a) In order to assist in the investigation of crime, the prosecution of civil
32 actions by city attorneys pursuant to paragraph (3) of subdivision (c), the arrest
33 and prosecution of criminals, and the recovery of lost, stolen, or found property,
34 the Attorney General shall keep and properly file a complete record of all copies
35 of fingerprints, copies of licenses to carry firearms issued pursuant to Section
36 ~~12050 of the Penal Code~~ 26150, 26155, 26170, or 26215, information reported to
37 the Department of Justice pursuant to Section ~~12053~~ 26225, dealers' records of
38 sales of firearms, reports provided pursuant to ~~Section 12072 or 12078~~ Article 1
39 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6,
40 or pursuant to any provision listed in subdivision (a) of Section 16585, forms
41 provided pursuant to Section 12084, as that section read prior to being repealed by
42 the act that amended this section, reports provided pursuant to ~~Section 12071~~

1 Sections 26700 to 26915, inclusive, that are not dealers' records of sales of
2 firearms, and reports of stolen, lost, found, pledged, or pawned property in any
3 city or county of this state, and shall, upon proper application therefor, furnish this
4 information to the officers referred to in Section 11105.

5 (b)(1) Except as provided in subdivision (d), the Attorney General shall not
6 retain or compile any information from reports filed pursuant to ~~subdivision (a) of~~
7 ~~Section 12078~~ any provision listed in subdivision (c) of Section 16585 for firearms
8 that are not handguns, from forms submitted pursuant to Section 12084, as that
9 section read prior to being repealed by the act that amended this section, for
10 firearms that are not handguns, or from dealers' records of sales for firearms that
11 are not handguns. All copies of the forms submitted, or any information received
12 in electronic form, pursuant to Section 12084, as that section read prior to being
13 repealed by the act that amended this section, for firearms that are not handguns,
14 or of the dealers' records of sales for firearms that are not handguns shall be
15 destroyed within five days of the clearance by the Attorney General, unless the
16 purchaser or transferor is ineligible to take possession of the firearm. All copies of
17 the reports filed, or any information received in electronic form, pursuant to
18 ~~subdivision (a) of Section 12078~~ any provision listed in subdivision (c) of Section
19 16585 for firearms that are not handguns shall be destroyed within five days of the
20 receipt by the Attorney General, unless retention is necessary for use in a criminal
21 prosecution.

22 (2) A peace officer, the Attorney General, a Department of Justice employee
23 designated by the Attorney General, or any authorized local law enforcement
24 employee shall not retain or compile any information from a ~~firearms~~ firearm
25 transaction record, as defined in ~~paragraph (5) of subdivision (c) of Section 12071~~
26 Section 16550, for firearms that are not handguns unless retention or compilation
27 is necessary for use in a criminal prosecution or in a proceeding to revoke a
28 license issued pursuant to ~~Section 12071~~ Sections 26700 to 26915, inclusive.

29 (3) A violation of this subdivision is a misdemeanor.

30 (c)(1) The Attorney General shall permanently keep and properly file and
31 maintain all information reported to the Department of Justice pursuant to ~~Sections~~
32 ~~12071, 12072, 12078, 12082 and former Section 12084 or any other law~~ the
33 following provisions, as to handguns and maintain a registry ~~thereof~~ thereof:

34 (A) Sections 26700 to 26915, inclusive.

35 (B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of
36 Title 4 of Part 6.

37 (C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part
38 6.

39 (D) Any provision listed in subdivision (a) of Section 16585.

40 (E) Former Section 12084.

41 (F) Any other law.

42 (2) The registry shall consist of all of the following:

1 (A) The name, address, identification of, place of birth (state or country),
2 complete telephone number, occupation, sex, description, and all legal names and
3 aliases ever used by the owner or person being loaned the particular handgun as
4 listed on the information provided to the department on the Dealers' Record of
5 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former
6 Section 12084, or reports made to the department pursuant to ~~Section 12078~~ any
7 provision listed in subdivision (a) of Section 16585 or any other law.

8 (B) The name and address of, and other information about, any person (whether
9 a dealer or a private party) from whom the owner acquired or the person being
10 loaned the particular handgun and when the firearm was acquired or loaned as
11 listed on the information provided to the department on the Dealers' Record of
12 Sale, the LEFT, or reports made to the department pursuant to ~~Section 12078~~ any
13 provision listed in subdivision (a) of Section 16585 or any other law.

14 (C) Any waiting period exemption applicable to the transaction which resulted
15 in the owner of or the person being loaned the particular handgun acquiring or
16 being loaned that firearm.

17 (D) The manufacturer's name if stamped on the firearm, model name or number
18 if stamped on the firearm, and, if applicable, the serial number, other number (if
19 more than one serial number is stamped on the firearm), caliber, type of firearm, if
20 the firearm is new or used, barrel length, and color of the firearm.

21 (3) Information in the registry referred to in this subdivision shall, upon proper
22 application therefor, be furnished to the officers referred to in Section 11105, to a
23 city attorney prosecuting a civil action, solely for use in prosecuting that civil
24 action and not for any other purpose, or to the person listed in the registry as the
25 owner or person who is listed as being loaned the particular handgun.

26 (4) If any person is listed in the registry as the owner of a firearm through a
27 Dealers' Record of Sale prior to 1979, and the person listed in the registry requests
28 by letter that the Attorney General store and keep the record electronically, as well
29 as in the record's existing photographic, photostatic, or nonerasable optically
30 stored form, the Attorney General shall do so within three working days of receipt
31 of the request. The Attorney General shall, in writing, and as soon as practicable,
32 notify the person requesting electronic storage of the record that the request has
33 been honored as required by this paragraph.

34 (d)(1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision
35 (b) of Section 11105 may disseminate the name of the subject of the record, the
36 number of the firearms listed in the record, and the description of any firearm,
37 including the make, model, and caliber, from the record relating to any firearm's
38 sale, transfer, registration, or license record, or any information reported to the
39 Department of Justice pursuant to ~~Section 12021.3, 12053, 12071, 12072, 12077,~~
40 ~~12078, 12082, or 12285~~ (i) Section 26225, (ii) Sections 26700 to 26915, inclusive,
41 (iii) Article 2 (commencing with Section 27500) of Chapter 4 of Division 6 of
42 Title 4 of Part 6, (iv) Chapter 5 (commencing with Section 28050) of Division 6 of
43 Title 4 of Part 6, (v) Article 2 (commencing with Section 28150) of Chapter 6 of

1 Division 6 of Title 4 of Part 6, (vi) Article 5 (commencing with Section 30900) of
2 Chapter 2 of Division 10 of Title 4 of Part 6, (vii) Chapter 2 (commencing with
3 Section 33850) of Division 11 of Title 4 of Part 6, or (viii) any provision listed in
4 subdivision (a) of Section 16585, if the following conditions are met:

5 (A) The subject of the record has been arraigned for a crime in which the victim
6 is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the
7 Family Code and is being prosecuted or is serving a sentence for the crime, or the
8 subject of the record is the subject of an emergency protective order, a temporary
9 restraining order, or an order after hearing, which is in effect and has been issued
10 by a family court under the Domestic Violence Protection Act set forth in Division
11 10 (commencing with Section 6200) of the Family Code.

12 (B) The information is disseminated only to the victim of the crime or to the
13 person who has obtained the emergency protective order, the temporary
14 restraining order, or the order after hearing issued by the family court.

15 (C) Whenever a law enforcement officer disseminates the information
16 authorized by this subdivision, that officer or another officer assigned to the case
17 shall immediately provide the victim of the crime with a “Victims of Domestic
18 Violence” card, as specified in subparagraph (H) of paragraph (9) of subdivision
19 (c) of Section 13701.

20 (2) The victim or person to whom information is disseminated pursuant to this
21 subdivision may disclose it as he or she deems necessary to protect himself or
22 herself or another person from bodily harm by the person who is the subject of the
23 record.

24 **Comment.** Section 11106 is amended to reflect nonsubstantive reorganization of the statutes
25 governing control of deadly weapons. An erroneous cross-reference to nonexistent “paragraph (5)
26 of subdivision (c) of Section 12071” has been replaced with a cross-reference to Section 16550,
27 which continues former Section 12071(c)(4)(A) without substantive change.

28 **Penal Code § 11108 (amended). Submission of descriptions of stolen property**

29 SEC. ____. Section 11108 of the Penal Code is amended to read:

30 11108. (a) Each sheriff or police chief executive shall submit descriptions of
31 serialized property, or nonserialized property that has been uniquely inscribed,
32 which has been reported stolen, lost, found, recovered, held for safekeeping, or
33 under observation, directly into the appropriate Department of Justice automated
34 property system for firearms, stolen bicycles, stolen vehicles, or other property, as
35 the case may be.

36 (b) Information about a firearm entered into the automated system for firearms
37 shall remain in the system until the reported firearm has been found, recovered, is
38 no longer under observation, or the record is determined to have been entered in
39 error.

40 (c) Any costs incurred by the Department of Justice to implement subdivision
41 (b) shall be reimbursed from funds other than fees charged and collected pursuant
42 to ~~subdivisions (e) and (f) of Section 12076~~ Sections 28225 and 28230.

1 **Comment.** Subdivision (c) of Section 11108 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 **Penal Code § 11413 (amended). Terrorism**

4 SEC. ____ . Section 11413 of the Penal Code is amended to read:

5 11413. (a) Any person who explodes, ignites, or attempts to explode or ignite
6 any destructive device or any explosive, or who commits arson, in or about any of
7 the places listed in subdivision (b), for the purpose of terrorizing another or in
8 reckless disregard of terrorizing another is guilty of a felony, and shall be punished
9 by imprisonment in the state prison for three, five, or seven years, and a fine not
10 exceeding ten thousand dollars (\$10,000).

11 (b) Subdivision (a) applies to the following places:

12 (1) Any health facility licensed under Chapter 2 (commencing with Section
13 1250) of Division 2 of the Health and Safety Code, or any place where medical
14 care is provided by a licensed health care professional.

15 (2) Any church, temple, synagogue, mosque, or other place of worship.

16 (3) The buildings, offices, and meeting sites of organizations that counsel for or
17 against abortion or among whose major activities are lobbying, publicizing, or
18 organizing with respect to public or private issues relating to abortion.

19 (4) Any place at which a lecture, film-showing, or other private meeting or
20 presentation that educates or propagates with respect to abortion practices or
21 policies, whether on private property or at a meeting site authorized for specific
22 use by a private group on public property, is taking place.

23 (5) Any bookstore or public or private library.

24 (6) Any building or facility designated as a courthouse.

25 (7) The home or office of a judicial officer.

26 (8) Any building or facility regularly occupied by county probation department
27 personnel in which the employees perform official duties of the probation
28 department.

29 (9) Any private property, if the property was targeted in whole or in part because
30 of any of the actual or perceived characteristics of the owner or occupant of the
31 property listed in subdivision (a) of Section 422.55.

32 (10) Any public or private school providing instruction in kindergarten or grades
33 1 to 12, inclusive.

34 (c) As used in this section, “judicial officer” means a magistrate, judge, justice,
35 commissioner, referee, or any person appointed by a court to serve in one of these
36 capacities, of any state or federal court located in this state.

37 (d) As used in this section, “terrorizing” means to cause a person of ordinary
38 emotions and sensibilities to fear for personal safety.

39 (e) Nothing in this section shall be construed to prohibit the prosecution of any
40 person pursuant to Section ~~12303.3~~ 18740 or any other provision of law in lieu of
41 prosecution pursuant to this section.

1 **Comment.** Subdivision (e) of Section 11413 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 **Penal Code § 11418 (amended). Weapons of mass destruction**

4 SEC. ____ . Section 11418 of the Penal Code is amended to read:

5 11418. (a)(1) Any person, without lawful authority, who possesses, develops,
6 manufactures, produces, transfers, acquires, or retains any weapon of mass
7 destruction, shall be punished by imprisonment in the state prison for 4, 8, or 12
8 years.

9 (2) Any person who commits a violation of paragraph (1) and who has been
10 previously convicted of Section 11411, 11412, 11413, 11418, 11418.1, 11418.5,
11 11419, 11460, ~~12303.1, 12303.2, or 12303.3~~ 18715, 18725, or 18740 shall be
12 punished by imprisonment in the state prison for 5, 10, or 15 years.

13 (b)(1) Any person who uses or directly employs against another person a
14 weapon of mass destruction in a form that may cause widespread, disabling illness
15 or injury in human beings shall be punished by imprisonment in the state prison
16 for life.

17 (2) Any person who uses or directly employs against another person a weapon
18 of mass destruction in a form that may cause widespread great bodily injury or
19 death and causes the death of any human being shall be punished by imprisonment
20 in the state prison for life without the possibility of parole. Nothing in this
21 paragraph shall prevent punishment instead under Section 190.2.

22 (3) Any person who uses a weapon of mass destruction in a form that may cause
23 widespread damage to or disruption of the food supply or “source of drinking
24 water” as defined in subdivision (d) of Section 25249.11 of the Health and Safety
25 Code shall be punished by imprisonment in the state prison for 5, 8, or 12 years
26 and by a fine of not more than one hundred thousand dollars (\$100,000).

27 (4) Any person who maliciously uses against animals, crops, or seed and seed
28 stock, a weapon of mass destruction in a form that may cause widespread damage
29 to or substantial diminution in the value of stock animals or crops, including seeds
30 used for crops or product of the crops, shall be punished by imprisonment in the
31 state prison for 4, 8, or 12 years and by a fine of not more than one hundred
32 thousand dollars (\$100,000).

33 (c) Any person who uses a weapon of mass destruction in a form that may cause
34 widespread and significant damage to public natural resources, including coastal
35 waterways and beaches, public parkland, surface waters, ground water, and
36 wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

37 (d)(1) Any person who uses recombinant technology or any other biological
38 advance to create new pathogens or more virulent forms of existing pathogens for
39 use in any crime described in subdivision (b) shall be punished by imprisonment
40 in the state prison for 4, 8, or 12 years and by a fine of not more than two hundred
41 fifty thousand dollars (\$250,000).

1 (2) Any person who uses recombinant technology or any other biological
2 advance to create new pathogens or more virulent forms of existing pathogens for
3 use in any crime described in subdivision (c) shall be punished by imprisonment in
4 the state prison for three, six, or nine years and by a fine of not more than two
5 hundred fifty thousand dollars (\$250,000).

6 (e) Nothing in this section shall be construed to prevent punishment instead
7 pursuant to any other provision of law that imposes a greater or more severe
8 punishment.

9 **Comment.** Subdivision (a) of Section 11418 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 For guidance in applying this section, see Section 16015 (determining existence of prior
12 conviction).

13 **Penal Code § 11460 (amended). Paramilitary organizations**

14 SEC. ____ . Section 11460 of the Penal Code is amended to read:

15 11460. (a) Any two or more persons who assemble as a paramilitary
16 organization for the purpose of practicing with weapons shall be punished by
17 imprisonment in a county jail for not more than one year or by a fine of not more
18 than one thousand dollars (\$1,000), or by both that fine and imprisonment.

19 As used in this subdivision, “paramilitary organization” means an organization
20 which is not an agency of the United States government or of the State of
21 California, or which is not a private school meeting the requirements set forth in
22 Section 48222 of the Education Code, but which engages in instruction or training
23 in guerrilla warfare or sabotage, or which, as an organization, engages in rioting or
24 the violent disruption of, or the violent interference with, school activities.

25 (b)(1) Any person who teaches or demonstrates to any other person the use,
26 application, or making of any firearm, explosive, or destructive device, or
27 technique capable of causing injury or death to persons, knowing or having reason
28 to know or intending that these objects or techniques will be unlawfully employed
29 for use in, or in the furtherance of a civil disorder, or any person who assembles
30 with one or more other persons for the purpose of training with, practicing with, or
31 being instructed in the use of any firearm, explosive, or destructive device, or
32 technique capable of causing injury or death to persons, with the intent to cause or
33 further a civil disorder, shall be punished by imprisonment in the county jail for
34 not more than one year or by a fine of not more than one thousand dollars
35 (\$1,000), or by both that fine and imprisonment.

36 Nothing in this subdivision shall make unlawful any act of any peace officer or a
37 member of the military forces of this state or of the United States, performed in the
38 lawful course of his or her official duties.

39 (2) As used in this section:

40 (A) “Civil disorder” means any disturbance involving acts of violence which
41 cause an immediate danger of or results in damage or injury to the property or
42 person of any other individual.

1 (B) “Destructive device” has the same meaning as in Section ~~12301~~ 16460.

2 (C) “Explosive” has the same meaning as in Section 12000 of the Health and
3 Safety Code.

4 (D) “Firearm” means any device designed to be used as a weapon, or which may
5 readily be converted to a weapon, from which is expelled a projectile by the force
6 of any explosion or other form of combustion, or the frame or receiver of this
7 weapon.

8 (E) “Peace officer” means any peace officer or other officer having the powers
9 of arrest of a peace officer, specified in Chapter 4.5 (commencing with Section
10 830) of Title 3 of Part 2.

11 **Comment.** Subdivision (b) of Section 11460 is amended to reflect nonsubstantive
12 reorganization of the statutes governing control of deadly weapons.

13 **Penal Code § 13730 (amended). Domestic violence-related calls for assistance**

14 SEC. ____ . Section 13730 of the Penal Code is amended to read:

15 13730. (a) Each law enforcement agency shall develop a system, by January 1,
16 1986, for recording all domestic violence-related calls for assistance made to the
17 department including whether weapons are involved. All domestic violence-
18 related calls for assistance shall be supported with a written incident report, as
19 described in subdivision (c), identifying the domestic violence incident. Monthly,
20 the total number of domestic violence calls received and the numbers of those
21 cases involving weapons shall be compiled by each law enforcement agency and
22 submitted to the Attorney General.

23 (b) The Attorney General shall report annually to the Governor, the Legislature,
24 and the public the total number of domestic violence-related calls received by
25 California law enforcement agencies, the number of cases involving weapons, and
26 a breakdown of calls received by agency, city, and county.

27 (c) Each law enforcement agency shall develop an incident report form that
28 includes a domestic violence identification code by January 1, 1986. In all
29 incidents of domestic violence, a report shall be written and shall be identified on
30 the face of the report as a domestic violence incident. The report shall include at
31 least all of the following:

32 (1) A notation of whether the officer or officers who responded to the domestic
33 violence call observed any signs that the alleged abuser was under the influence of
34 alcohol or a controlled substance.

35 (2) A notation of whether the officer or officers who responded to the domestic
36 violence call determined if any law enforcement agency had previously responded
37 to a domestic violence call at the same address involving the same alleged abuser
38 or victim.

39 (3) A notation of whether the officer or officers who responded to the domestic
40 violence call found it necessary, for the protection of the peace officer or other
41 persons present, to inquire of the victim, the alleged abuser, or both, whether a
42 firearm or other deadly weapon was present at the location, and, if there is an

1 inquiry, whether that inquiry disclosed the presence of a firearm or other deadly
2 weapon. Any firearm or other deadly weapon discovered by an officer at the scene
3 of a domestic violence incident shall be subject to confiscation pursuant to ~~Section~~
4 12028.5 Division 4 (commencing with Section 18250) of Title 2 of Part 6.

5 **Comment.** Subdivision (c) of Section 13730 is amended to reflect nonsubstantive
6 reorganization of the statutes governing control of deadly weapons.

PUBLIC CONTRACT CODE

7 **Pub. Cont. Code § 10334 (amended). Restriction on state employee from acquiring state** 8 **goods**

9 SEC. ____ . Section 10334 of the Public Contract Code is amended to read:

10 10334. (a) No state employee shall acquire any goods from the state, unless the
11 goods are offered to the general public in the regular course of the state's business
12 on the same terms and conditions as those applicable to the employee. "State
13 employee," as used in this section, means any employee of the state included
14 within Section 82009 of the Government Code, and all officers and employees
15 included within Section 4 of Article VII of the California Constitution, except
16 those persons excluded from the definition of "designated employee" under the
17 last paragraph of Section 82019 of the Government Code.

18 (b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5
19 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed
20 by the State of California for a period of more than 120 months who has been duly
21 retired through a service retirement or a peace officer retiring from a job-incurred
22 disability not related to a mental or emotional disorder and who has been granted
23 the legal right to carry a concealed firearm pursuant to ~~subdivision (a) of Section~~
24 12027 Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of
25 Title 4 of Part 6 of the Penal Code may be authorized by the person's department
26 head to purchase his or her state-issued handgun. Disability retired peace officers
27 need not meet the 120-month employment requirement. The cost of the handgun
28 shall be the fair market value as listed in the annual Blue Book of Gun Values or
29 replacement cost, whichever is less, of the handgun issued as determined by the
30 appointing power, plus a charge for the cost of handling. The retiring officer shall
31 request to purchase his or her handgun in writing to the department within 30
32 calendar days of his or her retirement date.

33 (c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5
34 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed
35 by the State of California who is authorized to carry firearms may purchase his or
36 her state-issued service firearm if the person's department head directs the
37 department to change its state-issued service weapon system. The cost of the
38 service firearm shall be the fair market value as listed in the annual Blue Book of
39 Gun Values or replacement cost, whichever is less, of the firearm issued as
40 determined by the department head, plus a charge for the cost of handling. The

1 requesting officer shall request to purchase his or her firearm in writing to the
2 department within 10 calendar days of receiving the new state-issued weapon.

3 **Comment.** Subdivision (b) of Section 10334 is amended to reflect nonsubstantive
4 reorganization of the statutes governing control of deadly weapons.

WELFARE & INSTITUTIONS CODE

5 **Welf. & Inst. Code § 676 (amended). Admission to juvenile court hearing**

6 SEC. ____ . Section 676 of the Welfare and Institutions Code is amended to read:

7 676. (a) Unless requested by the minor concerning whom the petition has been
8 filed and any parent or guardian present, the public shall not be admitted to a
9 juvenile court hearing. Nothing in this section shall preclude the attendance of up
10 to two family members of a prosecuting witness for the support of that witness, as
11 authorized by Section 868.5 of the Penal Code. The judge or referee may
12 nevertheless admit those persons he or she deems to have a direct and legitimate
13 interest in the particular case or the work of the court.

14 However, except as provided in subdivision (b), members of the public shall be
15 admitted, on the same basis as they may be admitted to trials in a court of criminal
16 jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging
17 that a minor is a person described in Section 602 by reason of the violation of any
18 one of the following offenses:

19 (1) Murder.

20 (2) Arson of an inhabited building.

21 (3) Robbery while armed with a dangerous or deadly weapon.

22 (4) Rape with force or violence or threat of great bodily harm.

23 (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

24 (6) Oral copulation by force, violence, duress, menace, or threat of great bodily
25 harm.

26 (7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

27 (8) Kidnapping for ransom.

28 (9) Kidnapping for purpose of robbery.

29 (10) Kidnapping with bodily harm.

30 (11) Assault with intent to murder or attempted murder.

31 (12) Assault with a firearm or destructive device.

32 (13) Assault by any means of force likely to produce great bodily injury.

33 (14) Discharge of a firearm into an inhabited dwelling or occupied building.

34 (15) Any offense described in Section 1203.09 of the Penal Code.

35 (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

36 (17) Any felony offense in which a minor personally used a weapon ~~listed in~~
37 ~~subdivision (a) of Section 12020~~ described in any provision listed in Section
38 16590 of the Penal Code.

39 (18) Burglary of an inhabited dwelling house or trailer coach, as defined in
40 Section 635 of the Vehicle Code, or the inhabited portion of any other building, if

1 the minor previously has been adjudged a ward of the court by reason of the
2 commission of any offense listed in this section, including an offense listed in this
3 paragraph.

4 (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

5 (20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378,
6 11378.5, 11379, and 11379.5 of the Health and Safety Code.

7 (21) Criminal street gang activity which constitutes a felony pursuant to Section
8 186.22 of the Penal Code.

9 (22) Manslaughter as specified in Section 192 of the Penal Code.

10 (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as
11 specified in Sections 246, 247, and ~~42034~~ 26100 of the Penal Code.

12 (24) Any crime committed with an assault weapon, as defined in Section ~~12276~~
13 30510 of the Penal Code, including possession of an assault weapon as specified
14 in ~~subdivision (b) of Section 12280~~ Section 30605 of the Penal Code.

15 (25) Carjacking, while armed with a dangerous or deadly weapon.

16 (26) Kidnapping, in violation of Section 209.5 of the Penal Code.

17 (27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

18 (28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

19 (b) Where the petition filed alleges that the minor is a person described in
20 Section 602 by reason of the commission of rape with force or violence or great
21 bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily
22 harm; oral copulation by force, violence, duress, menace, or threat of great bodily
23 harm; or any offense specified in Section 289 of the Penal Code, members of the
24 public shall not be admitted to the hearing in either of the following instances:

25 (1) Upon a motion for a closed hearing by the district attorney, who shall make
26 the motion if so requested by the victim.

27 (2) During the victim's testimony, if, at the time of the offense the victim was
28 under 16 years of age.

29 (c) The name of a minor found to have committed one of the offenses listed in
30 subdivision (a) shall not be confidential, unless the court, for good cause, so
31 orders. As used in this subdivision, "good cause" shall be limited to protecting the
32 personal safety of the minor, a victim, or a member of the public. The court shall
33 make a written finding, on the record, explaining why good cause exists to make
34 the name of the minor confidential.

35 (d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and
36 (f), when a petition is sustained for any offense listed in subdivision (a), the
37 charging petition, the minutes of the proceeding, and the orders of adjudication
38 and disposition of the court that are contained in the court file shall be available
39 for public inspection. Nothing in this subdivision shall be construed to authorize
40 public access to any other documents in the court file.

41 (e) The probation officer or any party may petition the juvenile court to prohibit
42 disclosure to the public of any file or record. The juvenile court shall prohibit the
43 disclosure if it appears that the harm to the minor, victims, witnesses, or public

1 from the public disclosure outweighs the benefit of public knowledge. However,
2 the court shall not prohibit disclosure for the benefit of the minor unless the court
3 makes a written finding that the reason for the prohibition is to protect the safety
4 of the minor.

5 (f) Nothing in this section shall be applied to limit the disclosure of information
6 as otherwise provided for by law.

7 (g) The juvenile court shall for each day that the court is in session, post in a
8 conspicuous place which is accessible to the general public, a written list of
9 hearings that are open to the general public pursuant to this section, the location of
10 those hearings, and the time when the hearings will be held.

11 **Comment.** Subdivision (a) of Section 676 is amended to reflect nonsubstantive reorganization
12 of the statutes governing control of deadly weapons.

13 **Welf. & Inst. Code § 707 (amended). Fitness for juvenile court**

14 SEC. _____. Section 707 of the Welfare and Institutions Code is amended to read:

15 707. (a)(1) In any case in which a minor is alleged to be a person described in
16 subdivision (a) of Section 602 by reason of the violation, when he or she was 16
17 years of age or older, of any criminal statute or ordinance except those listed in
18 subdivision (b), upon motion of the petitioner made prior to the attachment of
19 jeopardy the court shall cause the probation officer to investigate and submit a
20 report on the behavioral patterns and social history of the minor being considered
21 for a determination of unfitness. Following submission and consideration of the
22 report, and of any other relevant evidence that the petitioner or the minor may
23 wish to submit, the juvenile court may find that the minor is not a fit and proper
24 subject to be dealt with under the juvenile court law if it concludes that the minor
25 would not be amenable to the care, treatment, and training program available
26 through the facilities of the juvenile court, based upon an evaluation of the
27 following criteria:

28 (A) The degree of criminal sophistication exhibited by the minor.

29 (B) Whether the minor can be rehabilitated prior to the expiration of the juvenile
30 court's jurisdiction.

31 (C) The minor's previous delinquent history.

32 (D) Success of previous attempts by the juvenile court to rehabilitate the minor.

33 (E) The circumstances and gravity of the offense alleged in the petition to have
34 been committed by the minor.

35 A determination that the minor is not a fit and proper subject to be dealt with
36 under the juvenile court law may be based on any one or a combination of the
37 factors set forth above, which shall be recited in the order of unfitness. In any case
38 in which a hearing has been noticed pursuant to this section, the court shall
39 postpone the taking of a plea to the petition until the conclusion of the fitness
40 hearing, and no plea that may have been entered already shall constitute evidence
41 at the hearing.

1 (2)(A) This paragraph shall apply to a minor alleged to be a person described in
2 Section 602 by reason of the violation, when he or she has attained 16 years of
3 age, of any felony offense when the minor has been declared to be a ward of the
4 court pursuant to Section 602 on one or more prior occasions if both of the
5 following apply:

6 (i) The minor has previously been found to have committed two or more felony
7 offenses.

8 (ii) The offenses upon which the prior petition or petitions were based were
9 committed when the minor had attained 14 years of age.

10 (B) Upon motion of the petitioner made prior to the attachment of jeopardy the
11 court shall cause the probation officer to investigate and submit a report on the
12 behavioral patterns and social history of the minor being considered for a
13 determination of unfitness. Following submission and consideration of the report,
14 and of any other relevant evidence that the petitioner or the minor may wish to
15 submit, the minor shall be presumed to be not a fit and proper subject to be dealt
16 with under the juvenile court law unless the juvenile court concludes, based upon
17 evidence, which evidence may be of extenuating or mitigating circumstances, that
18 the minor would be amenable to the care, treatment, and training program
19 available through the facilities of the juvenile court based upon an evaluation of
20 the following criteria:

21 (i) The degree of criminal sophistication exhibited by the minor.

22 (ii) Whether the minor can be rehabilitated prior to the expiration of the juvenile
23 court's jurisdiction.

24 (iii) The minor's previous delinquent history.

25 (iv) Success of previous attempts by the juvenile court to rehabilitate the minor.

26 (v) The circumstances and gravity of the offense alleged in the petition to have
27 been committed by the minor.

28 A determination that the minor is a fit and proper subject to be dealt with under
29 the juvenile court law shall be based on a finding of amenability after
30 consideration of the criteria set forth above, and findings therefore recited in the
31 order as to each of the above criteria that the minor is fit and proper under each
32 and every one of the above criteria. In making a finding of fitness, the court may
33 consider extenuating and mitigating circumstances in evaluating each of the above
34 criteria. In any case in which the hearing has been noticed pursuant to this section,
35 the court shall postpone the taking of a plea to the petition until the conclusion of
36 the fitness hearing and no plea which may have been entered already shall
37 constitute evidence at the hearing. If the minor is found to be a fit and proper
38 subject to be dealt with under the juvenile court law pursuant to this subdivision,
39 the minor shall be committed to placement in a juvenile hall, ranch camp, forestry
40 camp, boot camp, or secure juvenile home pursuant to Section 730, or in any
41 institution operated by the Department of Corrections and Rehabilitation, Division
42 of Juvenile Facilities.

1 (3) If, pursuant to this subdivision, the minor is found to be not a fit and proper
2 subject for juvenile court treatment and is tried in a court of criminal jurisdiction
3 and found guilty by the trier of fact, the judge may commit the minor to the
4 Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in
5 lieu of sentencing the minor to the state prison, unless the limitations specified in
6 Section 1732.6 apply.

7 (b) Subdivision (c) shall be applicable in any case in which a minor is alleged to
8 be a person described in Section 602 by reason of the violation of one of the
9 following offenses:

10 (1) Murder.

11 (2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal
12 Code.

13 (3) Robbery.

14 (4) Rape with force, violence, or threat of great bodily harm.

15 (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

16 (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the
17 Penal Code.

18 (7) Oral copulation by force, violence, duress, menace, or threat of great bodily
19 harm.

20 (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

21 (9) Kidnapping for ransom.

22 (10) Kidnapping for purposes of robbery.

23 (11) Kidnapping with bodily harm.

24 (12) Attempted murder.

25 (13) Assault with a firearm or destructive device.

26 (14) Assault by any means of force likely to produce great bodily injury.

27 (15) Discharge of a firearm into an inhabited or occupied building.

28 (16) An offense described in Section 1203.09 of the Penal Code.

29 (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

30 (18) A felony offense in which the minor personally used a weapon ~~listed in~~
31 ~~subdivision (a) of Section 12020~~ described in any provision listed in Section
32 16590 of the Penal Code.

33 (19) A felony offense described in Section 136.1 or 137 of the Penal Code.

34 (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or
35 solution of a controlled substance specified in subdivision (e) of Section 11055 of
36 the Health and Safety Code.

37 (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal
38 Code, which also would constitute a felony violation of subdivision (b) of Section
39 186.22 of the Penal Code.

40 (22) Escape, by the use of force or violence, from a county juvenile hall, home,
41 ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if
42 great bodily injury is intentionally inflicted upon an employee of the juvenile
43 facility during the commission of the escape.

1 (23) Torture as described in Sections 206 and 206.1 of the Penal Code.

2 (24) Aggravated mayhem, as described in Section 205 of the Penal Code.

3 (25) Carjacking, as described in Section 215 of the Penal Code, while armed
4 with a dangerous or deadly weapon.

5 (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b)
6 of Section 209 of the Penal Code.

7 (27) Kidnapping as punishable in Section 209.5 of the Penal Code.

8 (28) The offense described in subdivision (c) of Section ~~12034~~ 26100 of the
9 Penal Code.

10 (29) The offense described in Section ~~12308~~ 18745 of the Penal Code.

11 (30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of
12 the Penal Code.

13 (c) With regard to a minor alleged to be a person described in Section 602 by
14 reason of the violation, when he or she was 14 years of age or older, of any of the
15 offenses listed in subdivision (b), upon motion of the petitioner made prior to the
16 attachment of jeopardy the court shall cause the probation officer to investigate
17 and submit a report on the behavioral patterns and social history of the minor
18 being considered for a determination of unfitness. Following submission and
19 consideration of the report, and of any other relevant evidence that the petitioner
20 or the minor may wish to submit, the minor shall be presumed to be not a fit and
21 proper subject to be dealt with under the juvenile court law unless the juvenile
22 court concludes, based upon evidence, which evidence may be of extenuating or
23 mitigating circumstances, that the minor would be amenable to the care, treatment,
24 and training program available through the facilities of the juvenile court based
25 upon an evaluation of each of the following criteria:

26 (1) The degree of criminal sophistication exhibited by the minor.

27 (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile
28 court's jurisdiction.

29 (3) The minor's previous delinquent history.

30 (4) Success of previous attempts by the juvenile court to rehabilitate the minor.

31 (5) The circumstances and gravity of the offenses alleged in the petition to have
32 been committed by the minor.

33 A determination that the minor is a fit and proper subject to be dealt with under
34 the juvenile court law shall be based on a finding of amenability after
35 consideration of the criteria set forth above, and findings therefore recited in the
36 order as to each of the above criteria that the minor is fit and proper under each
37 and every one of the above criteria. In making a finding of fitness, the court may
38 consider extenuating or mitigating circumstances in evaluating each of the above
39 criteria. In any case in which a hearing has been noticed pursuant to this section,
40 the court shall postpone the taking of a plea to the petition until the conclusion of
41 the fitness hearing and no plea which may have been entered already shall
42 constitute evidence at the hearing. If, pursuant to this subdivision, the minor is
43 found to be not a fit and proper subject for juvenile court treatment and is tried in a

1 court of criminal jurisdiction and found guilty by the trier of fact, the judge may
2 commit the minor to the Department of Corrections and Rehabilitation, Division
3 of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the
4 limitations specified in Section 1732.6 apply.

5 (d)(1) Except as provided in subdivision (b) of Section 602, the district attorney
6 or other appropriate prosecuting officer may file an accusatory pleading in a court
7 of criminal jurisdiction against any minor 16 years of age or older who is accused
8 of committing an offense enumerated in subdivision (b).

9 (2) Except as provided in subdivision (b) of Section 602, the district attorney or
10 other appropriate prosecuting officer may file an accusatory pleading against a
11 minor 14 years of age or older in a court of criminal jurisdiction in any case in
12 which any one or more of the following circumstances apply:

13 (A) The minor is alleged to have committed an offense that if committed by an
14 adult would be punishable by death or imprisonment in the state prison for life.

15 (B) The minor is alleged to have personally used a firearm during the
16 commission or attempted commission of a felony, as described in Section 12022.5
17 or 12022.53 of the Penal Code.

18 (C) The minor is alleged to have committed an offense listed in subdivision (b)
19 in which any one or more of the following circumstances apply:

20 (i) The minor has previously been found to be a person described in Section 602
21 by reason of the commission of an offense listed in subdivision (b).

22 (ii) The offense was committed for the benefit of, at the direction of, or in
23 association with any criminal street gang, as defined in subdivision (f) of Section
24 186.22 of the Penal Code, with the specific intent to promote, further, or assist in
25 criminal conduct by gang members.

26 (iii) The offense was committed for the purpose of intimidating or interfering
27 with any other person's free exercise or enjoyment of a right secured to him or her
28 by the Constitution or laws of this state or by the Constitution or laws of the
29 United States and because of the other person's race, color, religion, ancestry,
30 national origin, disability, gender, or sexual orientation, or because the minor
31 perceives that the other person has one or more of those characteristics, as
32 described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal
33 Code.

34 (iv) The victim of the offense was 65 years of age or older, or blind, deaf,
35 quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair,
36 and that disability was known or reasonably should have been known to the minor
37 at the time of the commission of the offense.

38 (3) Except as provided in subdivision (b) of Section 602, the district attorney or
39 other appropriate prosecuting officer may file an accusatory pleading in a court of
40 criminal jurisdiction against any minor 16 years of age or older who is accused of
41 committing one or more of the following offenses, if the minor has previously
42 been found to be a person described in Section 602 by reason of the violation of a
43 felony offense, when he or she was 14 years of age or older:

1 (A) A felony offense in which it is alleged that the victim of the offense was 65
2 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally
3 disabled, or confined to a wheelchair, and that disability was known or reasonably
4 should have been known to the minor at the time of the commission of the offense.

5 (B) A felony offense committed for the purposes of intimidating or interfering
6 with any other person's free exercise or enjoyment of a right secured to him or her
7 by the Constitution or laws of this state or by the Constitution or laws of the
8 United States and because of the other person's race, color, religion, ancestry,
9 national origin, disability, gender, or sexual orientation, or because the minor
10 perceived that the other person had one or more of those characteristics, as
11 described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal
12 Code.

13 (C) The offense was committed for the benefit of, at the direction of, or in
14 association with any criminal street gang as prohibited by Section 186.22 of the
15 Penal Code.

16 (4) In any case in which the district attorney or other appropriate prosecuting
17 officer has filed an accusatory pleading against a minor in a court of criminal
18 jurisdiction pursuant to this subdivision, the case shall then proceed according to
19 the laws applicable to a criminal case. In conjunction with the preliminary hearing
20 as provided in Section 738 of the Penal Code, the magistrate shall make a finding
21 that reasonable cause exists to believe that the minor comes within this
22 subdivision. If reasonable cause is not established, the criminal court shall transfer
23 the case to the juvenile court having jurisdiction over the matter.

24 (5) For an offense for which the prosecutor may file the accusatory pleading in a
25 court of criminal jurisdiction pursuant to this subdivision, but elects instead to file
26 a petition in the juvenile court, if the minor is subsequently found to be a person
27 described in subdivision (a) of Section 602, the minor shall be committed to
28 placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure
29 juvenile home pursuant to Section 730, or in any institution operated by the
30 Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

31 (6) If, pursuant to this subdivision, the minor is found to be not a fit and proper
32 subject for juvenile court treatment and is tried in a court of criminal jurisdiction
33 and found guilty by the trier of fact, the judge may commit the minor to the
34 Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in
35 lieu of sentencing the minor to the state prison, unless the limitations specified in
36 Section 1732.6 apply.

37 (e) A report submitted by a probation officer pursuant to this section regarding
38 the behavioral patterns and social history of the minor being considered for a
39 determination of unfitness shall include any written or oral statement offered by
40 the victim, the victim's parent or guardian if the victim is a minor, or if the victim
41 has died, the victim's next of kin, as authorized by subdivision (b) of Section
42 656.2. Victims' statements shall be considered by the court to the extent they are
43 relevant to the court's determination of unfitness.

1 **Comment.** Subdivision (b) of Section 707 is amended to reflect nonsubstantive reorganization
2 of the statutes governing control of deadly weapons.

3 **Welf. & Inst. Code § 727 (amended). Court authority over minor adjudged ward of court**

4 SEC. ____ . Section 727 of the Welfare and Institutions Code is amended to read:

5 727. (a) When a minor is adjudged a ward of the court on the ground that he or
6 she is a person described by Section 601 or 602, the court may make any and all
7 reasonable orders for the care, supervision, custody, conduct, maintenance, and
8 support of the minor, including medical treatment, subject to further order of the
9 court. To facilitate coordination and cooperation among governmental agencies,
10 the court may, after giving notice and an opportunity to be heard, join in the
11 juvenile court proceedings any agency that the court determines has failed to meet
12 a legal obligation to provide services to the minor. However, no governmental
13 agency shall be joined as a party in a juvenile court proceeding in which a minor
14 has been ordered committed to the Department of the Youth Authority. In any
15 proceeding in which an agency is joined, the court shall not impose duties upon
16 the agency beyond those mandated by law. Nothing in this section shall prohibit
17 agencies which have received notice of the hearing on joinder from meeting prior
18 to the hearing to coordinate services for the minor.

19 The court has no authority to order services unless it has been determined
20 through the administrative process of an agency that has been joined as a party,
21 that the minor is eligible for those services. With respect to mental health
22 assessment, treatment, and case management services pursuant to Chapter 26.5
23 (commencing with Section 7570) of Division 7 of Title 1 of the Government
24 Code, the court's determination shall be limited to whether the agency has
25 complied with that chapter.

26 In the discretion of the court, a ward may be ordered to be on probation without
27 supervision of the probation officer. The court, in so ordering, may impose on the
28 ward any and all reasonable conditions of behavior as may be appropriate under
29 this disposition. A minor who has been adjudged a ward of the court on the basis
30 of the commission of any of the offenses described in subdivision (b) or paragraph
31 (2) of subdivision (d) of Section 707, Section 459 of the Penal Code, or
32 subdivision (a) of Section 11350 of the Health and Safety Code, shall not be
33 eligible for probation without supervision of the probation officer. A minor who
34 has been adjudged a ward of the court on the basis of the commission of any
35 offense involving the sale or possession for sale of a controlled substance, except
36 misdemeanor offenses involving marijuana, as specified in Chapter 2
37 (commencing with Section 11053) of Division 10 of the Health and Safety Code,
38 or of an offense in violation of Section ~~12220~~ 32625 of the Penal Code, shall be
39 eligible for probation without supervision of the probation officer only when the
40 court determines that the interests of justice would best be served and states
41 reasons on the record for that determination.

1 In all other cases, the court shall order the care, custody, and control of the
2 minor to be under the supervision of the probation officer who may place the
3 minor in any of the following:

4 (1) The approved home of a relative, or the approved home of a nonrelative,
5 extended family member as defined in Section 362.7. When a decision has been
6 made to place the minor in the home of a relative, the court may authorize the
7 relative to give legal consent for the minor's medical, surgical, and dental care and
8 education as if the relative caretaker were the custodial parent of the minor.

9 (2) A suitable licensed community care facility.

10 (3) With a foster family agency to be placed in a suitable licensed foster family
11 home or certified family home which has been certified by the agency as meeting
12 licensing standards.

13 (4)(A) Every child adjudged a ward of the juvenile court who is residing in a
14 placement as defined in paragraphs (1) to (3), inclusive, shall be entitled to
15 participate in age-appropriate extracurricular, enrichment, and social activities. No
16 state or local regulation or policy may prevent, or create barriers to, participation
17 in those activities. Each state and local entity shall ensure that private agencies that
18 provide foster care services to wards have policies consistent with this section and
19 that those agencies promote and protect the ability of wards to participate in age-
20 appropriate extracurricular, enrichment, and social activities. A group home
21 administrator, a facility manager, or his or her responsible designee, and a
22 caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall
23 use a reasonable and prudent parent standard, as defined in paragraph (2) of
24 subdivision (a) of Section 362.04, in determining whether to give permission for a
25 child residing in foster care to participate in extracurricular, enrichment, and social
26 activities. A group home administrator, a facility manager, or his or her
27 responsible designee, and a caregiver shall take reasonable steps to determine the
28 appropriateness of the activity taking into consideration the child's age, maturity,
29 and developmental level.

30 (B) A group home administrator or a facility manager, or his or her responsible
31 designee, is encouraged to consult with social work or treatment staff members
32 who are most familiar with the child at the group home in applying and using the
33 reasonable and prudent parent standard.

34 (b) When a minor has been adjudged a ward of the court on the ground that he
35 or she is a person described in Section 601 or 602 and the court finds that notice
36 has been given in accordance with Section 661, and when the court orders that a
37 parent or guardian shall retain custody of that minor either subject to or without
38 the supervision of the probation officer, the parent or guardian may be required to
39 participate with that minor in a counseling or education program including, but not
40 limited to, parent education and parenting programs operated by community
41 colleges, school districts, or other appropriate agencies designated by the court.

42 (c) The juvenile court may direct any and all reasonable orders to the parents
43 and guardians of the minor who is the subject of any proceedings under this

1 chapter as the court deems necessary and proper to carry out subdivisions (a) and
2 (b), including orders to appear before a county financial evaluation officer and
3 orders directing the parents or guardians to ensure the minor's regular school
4 attendance and to make reasonable efforts to obtain appropriate educational
5 services necessary to meet the needs of the minor.

6 When counseling or other treatment services are ordered for the minor, the
7 parent, guardian, or foster parent shall be ordered to participate in those services,
8 unless participation by the parent, guardian, or foster parent is deemed by the court
9 to be inappropriate or potentially detrimental to the child.

10 **Comment.** Subdivision (a) of Section 727 is amended to reflect nonsubstantive reorganization
11 of the statutes governing control of deadly weapons.

12 **Welf. & Inst. Code § 1772 (amended). Honorable discharge from Youth Authority Board**

13 SEC. ____ . Section 1772 of the Welfare and Institutions Code is amended to
14 read:

15 1772. (a) Subject to subdivision (b), every person honorably discharged from
16 control by the Youth Authority Board who has not, during the period of control by
17 the authority, been placed by the authority in a state prison shall thereafter be
18 released from all penalties and disabilities resulting from the offense or crime for
19 which he or she was committed, and every person discharged may petition the
20 court which committed him or her, and the court may upon that petition set aside
21 the verdict of guilty and dismiss the accusation or information against the
22 petitioner who shall thereafter be released from all penalties and disabilities
23 resulting from the offense or crime for which he or she was committed, including,
24 but not limited to, any disqualification for any employment or occupational
25 license, or both, created by any other provision of law.

26 (b) Notwithstanding subdivision (a):

27 (1) A person described by subdivision (a) shall not be eligible for appointment
28 as a peace officer employed by any public agency if his or her appointment would
29 otherwise be prohibited by Section 1029 of the Government Code. However, that
30 person may be appointed and employed as a peace officer by the Department of
31 the Youth Authority if (A) at least five years have passed since his or her
32 honorable discharge, and the person has had no misdemeanor or felony
33 convictions except for traffic misdemeanors since he or she was honorably
34 discharged by the Youth Authority Board, or (B) the person was employed as a
35 peace officer by the Department of the Youth Authority on or before January 1,
36 1983. No person who is under the jurisdiction of the Department of the Youth
37 Authority shall be admitted to an examination for a peace officer position with the
38 department unless and until the person has been honorably discharged from the
39 jurisdiction of the Youth Authority Board.

40 (2) A person described by subdivision (a) is subject to ~~Sections 12021 and~~
41 12021.1 Chapter 2 (commencing with Section 29800) and Chapter 3 (commencing
42 with Section 29900) of Division 9 of Title 4 of Part 6 of the Penal Code.

1 (3) The conviction of a person described by subdivision (a) for an offense listed
2 in subdivision (b) of Section 707 is admissible in a subsequent criminal, juvenile,
3 or civil proceeding if otherwise admissible, if all the following are true:

4 (A) The person was 16 years of age or older at the time he or she committed the
5 offense.

6 (B) The person was found unfit to be dealt with under the juvenile court law
7 pursuant to Section 707 because he or she was alleged to have committed an
8 offense listed in subdivision (b) of Section 707.

9 (C) The person was tried as an adult and convicted of an offense listed in
10 subdivision (b) of Section 707.

11 (D) The person was committed to the Department of the Youth Authority for the
12 offense referred to in subparagraph (C).

13 (4) The conviction of a person described by subdivision (a) may be used to
14 enhance the punishment for a subsequent offense.

15 (5) The conviction of a person who is 18 years of age or older at the time he or
16 she committed the offense is admissible in a subsequent civil, criminal, or juvenile
17 proceeding, if otherwise admissible pursuant to law.

18 (c) Every person discharged from control by the Youth Authority Board shall be
19 informed of the provisions of this section in writing at the time of discharge.

20 (d) "Honorably discharged" as used in this section means and includes every
21 person whose discharge is based upon a good record on parole.

22 **Comment.** Subdivision (b) of Section 1772 is amended to reflect nonsubstantive
23 reorganization of the statutes governing control of deadly weapons.

24 **Welf. & Inst. Code § 4514 (amended). Records of person with developmental disability**

25 SEC. ____ . Section 4514 of the Welfare and Institutions Code is amended to
26 read:

27 4514. All information and records obtained in the course of providing intake,
28 assessment, and services under Division 4.1 (commencing with Section 4400),
29 Division 4.5 (commencing with Section 4500), Division 6 (commencing with
30 Section 6000), or Division 7 (commencing with Section 7100) to persons with
31 developmental disabilities shall be confidential. Information and records obtained
32 in the course of providing similar services to either voluntary or involuntary
33 recipients prior to 1969 shall also be confidential. Information and records shall be
34 disclosed only in any of the following cases:

35 (a) In communications between qualified professional persons, whether
36 employed by a regional center or state developmental center, or not, in the
37 provision of intake, assessment, and services or appropriate referrals. The consent
38 of the person with a developmental disability, or his or her guardian or
39 conservator, shall be obtained before information or records may be disclosed by
40 regional center or state developmental center personnel to a professional not
41 employed by the regional center or state developmental center, or a program not
42 vendored by a regional center or state developmental center.

1 (b) When the person with a developmental disability, who has the capacity to
2 give informed consent, designates individuals to whom information or records
3 may be released, except that nothing in this chapter shall be construed to compel a
4 physician, psychologist, social worker, marriage and family therapist, nurse,
5 attorney, or other professional to reveal information that has been given to him or
6 her in confidence by a family member of the person unless a valid release has been
7 executed by that family member.

8 (c) To the extent necessary for a claim, or for a claim or application to be made
9 on behalf of a person with a developmental disability for aid, insurance,
10 government benefit, or medical assistance to which he or she may be entitled.

11 (d) If the person with a developmental disability is a minor, ward, or
12 conservatee, and his or her parent, guardian, conservator, or limited conservator
13 with access to confidential records, designates, in writing, persons to whom
14 records or information may be disclosed, except that nothing in this chapter shall
15 be construed to compel a physician, psychologist, social worker, marriage and
16 family therapist, nurse, attorney, or other professional to reveal information that
17 has been given to him or her in confidence by a family member of the person
18 unless a valid release has been executed by that family member.

19 (e) For research, provided that the Director of Developmental Services
20 designates by regulation rules for the conduct of research and requires the research
21 to be first reviewed by the appropriate institutional review board or boards. These
22 rules shall include, but need not be limited to, the requirement that all researchers
23 shall sign an oath of confidentiality as follows:

24
25 “ _____
26 Date

27
28 As a condition of doing research concerning persons with developmental
29 disabilities who have received services from ____ (fill in the facility, agency or
30 person), I, _____, agree to obtain the prior informed consent of persons who have
31 received services to the maximum degree possible as determined by the
32 appropriate institutional review board or boards for protection of human subjects
33 reviewing my research, or the person’s parent, guardian, or conservator, and I
34 further agree not to divulge any information obtained in the course of the research
35 to unauthorized persons, and not to publish or otherwise make public any
36 information regarding persons who have received services so those persons who
37 received services are identifiable.

38 I recognize that the unauthorized release of confidential information may make
39 me subject to a civil action under provisions of the Welfare and Institutions Code.

40
41 _____”
42 Signed

1 (f) To the courts, as necessary to the administration of justice.

2 (g) To governmental law enforcement agencies as needed for the protection of
3 federal and state elective constitutional officers and their families.

4 (h) To the Senate Committee on Rules or the Assembly Committee on Rules for
5 the purposes of legislative investigation authorized by the committee.

6 (i) To the courts and designated parties as part of a regional center report or
7 assessment in compliance with a statutory or regulatory requirement, including,
8 but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and
9 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and
10 Section 56557 of Title 17 of the California Code of Regulations.

11 (j) To the attorney for the person with a developmental disability in any and all
12 proceedings upon presentation of a release of information signed by the person,
13 except that when the person lacks the capacity to give informed consent, the
14 regional center or state developmental center director or designee, upon satisfying
15 himself or herself of the identity of the attorney, and of the fact that the attorney
16 represents the person, shall release all information and records relating to the
17 person except that nothing in this article shall be construed to compel a physician,
18 psychologist, social worker, marriage and family therapist, nurse, attorney, or
19 other professional to reveal information that has been given to him or her in
20 confidence by a family member of the person unless a valid release has been
21 executed by that family member.

22 (k) Upon written consent by a person with a developmental disability previously
23 or presently receiving services from a regional center or state developmental
24 center, the director of the regional center or state developmental center, or his or
25 her designee, may release any information, except information that has been given
26 in confidence by members of the family of the person with developmental
27 disabilities, requested by a probation officer charged with the evaluation of the
28 person after his or her conviction of a crime if the regional center or state
29 developmental center director or designee determines that the information is
30 relevant to the evaluation. The consent shall only be operative until sentence is
31 passed on the crime of which the person was convicted. The confidential
32 information released pursuant to this subdivision shall be transmitted to the court
33 separately from the probation report and shall not be placed in the probation
34 report. The confidential information shall remain confidential except for purposes
35 of sentencing. After sentencing, the confidential information shall be sealed.

36 (l) Between persons who are trained and qualified to serve on “multidisciplinary
37 personnel” teams pursuant to subdivision (d) of Section 18951. The information
38 and records sought to be disclosed shall be relevant to the prevention,
39 identification, management, or treatment of an abused child and his or her parents
40 pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

41 (m) When a person with a developmental disability dies from any cause, natural
42 or otherwise, while hospitalized in a state developmental center, the State
43 Department of Developmental Services, the physician in charge of the client, or

1 the professional in charge of the facility or his or her designee, shall release
2 information and records to the coroner. The State Department of Developmental
3 Services, the physician in charge of the client, or the professional in charge of the
4 facility or his or her designee, shall not release any notes, summaries, transcripts,
5 tapes, or records of conversations between the resident and health professional
6 personnel of the hospital relating to the personal life of the resident that is not
7 related to the diagnosis and treatment of the resident's physical condition. Any
8 information released to the coroner pursuant to this section shall remain
9 confidential and shall be sealed and shall not be made part of the public record.

10 (n) To authorized licensing personnel who are employed by, or who are
11 authorized representatives of, the State Department of Health Services, and who
12 are licensed or registered health professionals, and to authorized legal staff or
13 special investigators who are peace officers who are employed by, or who are
14 authorized representatives of, the State Department of Social Services, as
15 necessary to the performance of their duties to inspect, license, and investigate
16 health facilities and community care facilities, and to ensure that the standards of
17 care and services provided in these facilities are adequate and appropriate and to
18 ascertain compliance with the rules and regulations to which the facility is subject.
19 The confidential information shall remain confidential except for purposes of
20 inspection, licensing, or investigation pursuant to Chapter 2 (commencing with
21 Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the
22 Health and Safety Code, or a criminal, civil, or administrative proceeding in
23 relation thereto. The confidential information may be used by the State
24 Department of Health Services or the State Department of Social Services in a
25 criminal, civil, or administrative proceeding. The confidential information shall be
26 available only to the judge or hearing officer and to the parties to the case. Names
27 which are confidential shall be listed in attachments separate to the general
28 pleadings. The confidential information shall be sealed after the conclusion of the
29 criminal, civil, or administrative hearings, and shall not subsequently be released
30 except in accordance with this subdivision. If the confidential information does not
31 result in a criminal, civil, or administrative proceeding, it shall be sealed after the
32 State Department of Health Services or the State Department of Social Services
33 decides that no further action will be taken in the matter of suspected licensing
34 violations. Except as otherwise provided in this subdivision, confidential
35 information in the possession of the State Department of Health Services or the
36 State Department of Social Services shall not contain the name of the person with
37 a developmental disability.

38 (o) To any board which licenses and certifies professionals in the fields of
39 mental health and developmental disabilities pursuant to state law, when the
40 Director of Developmental Services has reasonable cause to believe that there has
41 occurred a violation of any provision of law subject to the jurisdiction of a board
42 and the records are relevant to the violation. The information shall be sealed after
43 a decision is reached in the matter of the suspected violation, and shall not

1 subsequently be released except in accordance with this subdivision. Confidential
2 information in the possession of the board shall not contain the name of the person
3 with a developmental disability.

4 (p) To governmental law enforcement agencies by the director of a regional
5 center or state developmental center, or his or her designee, when (1) the person
6 with a developmental disability has been reported lost or missing or (2) there is
7 probable cause to believe that a person with a developmental disability has
8 committed, or has been the victim of, murder, manslaughter, mayhem, aggravated
9 mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a
10 felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or
11 battery, or unlawful possession of a weapon, as provided in ~~Section 12020~~ any
12 provision listed in Section 16590 of the Penal Code.

13 This subdivision shall be limited solely to information directly relating to the
14 factual circumstances of the commission of the enumerated offenses and shall not
15 include any information relating to the mental state of the patient or the
16 circumstances of his or her treatment unless relevant to the crime involved.

17 This subdivision shall not be construed as an exception to, or in any other way
18 affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter
19 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section
20 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

21 (q) To the Youth Authority and Adult Correctional Agency or any component
22 thereof, as necessary to the administration of justice.

23 (r) To an agency mandated to investigate a report of abuse filed pursuant to
24 either Section 11164 of the Penal Code or Section 15630 of the Welfare and
25 Institutions Code for the purposes of either a mandated or voluntary report or
26 when those agencies request information in the course of conducting their
27 investigation.

28 (s) When a person with developmental disabilities, or the parent, guardian, or
29 conservator of a person with developmental disabilities who lacks capacity to
30 consent, fails to grant or deny a request by a regional center or state developmental
31 center to release information or records relating to the person with developmental
32 disabilities within a reasonable period of time, the director of the regional or
33 developmental center, or his or her designee, may release information or records
34 on behalf of that person provided both of the following conditions are met:

35 (1) Release of the information or records is deemed necessary to protect the
36 person's health, safety, or welfare.

37 (2) The person, or the person's parent, guardian, or conservator, has been
38 advised annually in writing of the policy of the regional center or state
39 developmental center for release of confidential client information or records
40 when the person with developmental disabilities, or the person's parent, guardian,
41 or conservator, fails to respond to a request for release of the information or
42 records within a reasonable period of time. A statement of policy contained in the

1 client's individual program plan shall be deemed to comply with the notice
2 requirement of this paragraph.

3 (t)(1) When an employee is served with a notice of adverse action, as defined in
4 Section 19570 of the Government Code, the following information and records
5 may be released:

6 (A) All information and records that the appointing authority relied upon in
7 issuing the notice of adverse action.

8 (B) All other information and records that are relevant to the adverse action, or
9 that would constitute relevant evidence as defined in Section 210 of the Evidence
10 Code.

11 (C) The information described in subparagraphs (A) and (B) may be released
12 only if both of the following conditions are met:

13 (i) The appointing authority has provided written notice to the consumer and the
14 consumer's legal representative or, if the consumer has no legal representative or
15 if the legal representative is a state agency, to the clients' rights advocate, and the
16 consumer, the consumer's legal representative, or the clients' rights advocate has
17 not objected in writing to the appointing authority within five business days of
18 receipt of the notice, or the appointing authority, upon review of the objection has
19 determined that the circumstances on which the adverse action is based are
20 egregious or threaten the health, safety, or life of the consumer or other consumers
21 and without the information the adverse action could not be taken.

22 (ii) The appointing authority, the person against whom the adverse action has
23 been taken, and the person's representative, if any, have entered into a stipulation
24 that does all of the following:

25 (I) Prohibits the parties from disclosing or using the information or records for
26 any purpose other than the proceedings for which the information or records were
27 requested or provided.

28 (II) Requires the employee and the employee's legal representative to return to
29 the appointing authority all records provided to them under this subdivision,
30 including, but not limited to, all records and documents or copies thereof that are
31 no longer in the possession of the employee or the employee's legal representative
32 because they were from any source containing confidential information protected
33 by this section, and all copies of those records and documents, within 10 days of
34 the date that the adverse action becomes final except for the actual records and
35 documents submitted to the administrative tribunal as a component of an appeal
36 from the adverse action.

37 (III) Requires the parties to submit the stipulation to the administrative tribunal
38 with jurisdiction over the adverse action at the earliest possible opportunity.

39 (2) For the purposes of this subdivision, the State Personnel Board may, prior to
40 any appeal from adverse action being filed with it, issue a protective order, upon
41 application by the appointing authority, for the limited purpose of prohibiting the
42 parties from disclosing or using information or records for any purpose other than
43 the proceeding for which the information or records were requested or provided,

1 and to require the employee or the employee's legal representative to return to the
2 appointing authority all records provided to them under this subdivision,
3 including, but not limited to, all records and documents from any source
4 containing confidential information protected by this section, and all copies of
5 those records and documents, within 10 days of the date that the adverse action
6 becomes final, except for the actual records and documents that are no longer in
7 the possession of the employee or the employee's legal representatives because
8 they were submitted to the administrative tribunal as a component of an appeal
9 from the adverse action.

10 (3) Individual identifiers, including, but not limited to, names, social security
11 numbers, and hospital numbers, that are not necessary for the prosecution or
12 defense of the adverse action, shall not be disclosed.

13 (4) All records, documents, or other materials containing confidential
14 information protected by this section that have been submitted or otherwise
15 disclosed to the administrative agency or other person as a component of an appeal
16 from an adverse action shall, upon proper motion by the appointing authority to
17 the administrative tribunal, be placed under administrative seal and shall not,
18 thereafter, be subject to disclosure to any person or entity except upon the issuance
19 of an order of a court of competent jurisdiction.

20 (5) For purposes of this subdivision, an adverse action becomes final when the
21 employee fails to answer within the time specified in Section 19575 of the
22 Government Code, or, after filing an answer, withdraws the appeal, or, upon
23 exhaustion of the administrative appeal or of the judicial review remedies as
24 otherwise provided by law.

25 **Comment.** Subdivision (p) of Section 4514 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Welf. & Inst. Code § 5328.4 (amended). Mandatory release of patient information to law**
28 **enforcement agencies**

29 SEC. _____. Section 5328.4 of the Welfare and Institutions Code is amended to
30 read:

31 5328.4. The physician in charge of the patient, or the professional person in
32 charge of the facility or his or her designee, when he or she has probable cause to
33 believe that a patient while hospitalized has committed, or has been the victim of,
34 murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking,
35 robbery, assault with intent to commit a felony, arson, extortion, rape, forcible
36 sodomy, forcible oral copulation, unlawful possession of a weapon as provided in
37 ~~Section 12020~~ any provision listed in Section 16590 of the Penal Code, or escape
38 from a hospital by a mentally disordered sex offender as provided in Section 6330
39 of the Welfare and Institutions Code, shall release information about the patient to
40 governmental law enforcement agencies.

41 The physician in charge of the patient, or the professional person in charge of
42 the facility or his or her designee, when he or she has probable cause to believe

1 that a patient, while hospitalized has committed, or has been the victim of assault
2 or battery may release information about the patient to governmental law
3 enforcement agencies.

4 This section shall be limited solely to information directly relating to the factual
5 circumstances of the commission of the enumerated offenses and shall not include
6 any information relating to the mental state of the patient or the circumstances of
7 his or her voluntary or involuntary admission, commitment, or treatment.

8 This section shall not be construed as an exception to or in any other way
9 affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4
10 of Division 8 of the Evidence Code.

11 **Comment.** Section 5328.4 is amended to reflect nonsubstantive reorganization of the statutes
12 governing control of deadly weapons.

13 **Welf. & Inst. Code § 6500 (amended). Commitment of persons dangerous to self or others**

14 SEC. _____. Section 6500 of the Welfare and Institutions Code is amended to
15 read:

16 6500. On and after July 1, 1971, no mentally retarded person may be committed
17 to the State Department of Developmental Services pursuant to this article, unless
18 he or she is a danger to himself or herself, or others. For the purposes of this
19 article, dangerousness to self or others shall be considered to include, but not be
20 limited to, a finding of incompetence to stand trial pursuant to the provisions of
21 Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code
22 when the defendant has been charged with murder, mayhem, aggravated mayhem,
23 a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim
24 suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or
25 by a person armed with a dangerous or deadly weapon or in which the victim
26 suffers great bodily injury, carjacking perpetrated by torture or by a person armed
27 with a dangerous or deadly weapon or in which the victim suffers great bodily
28 injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation
29 of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of
30 subdivision (a) of Section 261 of the Penal Code, a violation of Section 288 of the
31 Penal Code, any of the following acts when committed by force, violence, duress,
32 menace, fear of immediate and unlawful bodily injury on the victim or another
33 person: a violation of paragraph (1) or (2) of subdivision (a) of Section 262 of the
34 Penal Code, a violation of Section 264.1, 286, or 288a of the Penal Code, or a
35 violation of subdivision (a) of Section 289 of the Penal Code; a violation of
36 Section 459 of the Penal Code in the first degree, assault with intent to commit
37 murder, a violation of Section 220 of the Penal Code in which the victim suffers
38 great bodily injury, a violation of Section ~~12303.1, 12303.3, 12308, 12309, or~~
39 ~~12310~~ 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or if the
40 defendant has been charged with a felony involving death, great bodily injury, or
41 an act which poses a serious threat of bodily harm to another person.

1 If the mentally retarded person is in the care or treatment of a state hospital,
2 developmental center, or other facility at the time a petition for commitment is
3 filed pursuant to this article, proof of a recent overt act while in the care and
4 treatment of a state hospital, developmental center, or other facility is not required
5 in order to find that the person is a danger to self or others.

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

12 In any proceedings conducted under the authority of this article, the alleged
13 mentally retarded person shall be informed of his or her right to counsel by the
14 court, and if the person does not have an attorney for the proceedings, the court
15 shall immediately appoint the public defender or other attorney to represent him or
16 her. The person shall pay the cost for the legal services if he or she is able to do so.
17 At any judicial proceeding under the provisions of this article, allegations that a
18 person is mentally retarded and a danger to himself or herself or to others shall be
19 presented by the district attorney for the county unless the board of supervisors, by
20 ordinance or resolution, delegates this authority to the county counsel.

21 **Comment.** Section 6500 is amended to reflect nonsubstantive reorganization of the statutes
22 governing control of deadly weapons.

23 **Welf. & Inst. Code § 8100 (amended). Weapons restrictions on patients and other persons**

24 SEC. ____ . Section 8100 of the Welfare and Institutions Code is amended to
25 read:

26 8100. (a) A person shall not have in his or her possession or under his or her
27 custody or control, or purchase or receive, or attempt to purchase or receive, any
28 firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he
29 or she has been admitted to a facility and is receiving inpatient treatment and, in
30 the opinion of the attending health professional who is primarily responsible for
31 the patient's treatment of a mental disorder, is a danger to self or others, as
32 specified by Section 5150, 5250, or 5300, even though the patient has consented to
33 that treatment. A person is not subject to this subdivision once he or she is
34 discharged from the facility.

35 (b)(1) A person shall not have in his or her possession or under his or her
36 custody or control, or purchase or receive, or attempt to purchase or receive, any
37 firearms whatsoever or any other deadly weapon for a period of six months
38 whenever, on or after January 1, 1992, he or she communicates to a licensed
39 psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of
40 the Evidence Code, a serious threat of physical violence against a reasonably
41 identifiable victim or victims. The six-month period shall commence from the date
42 that the licensed psychotherapist reports to the local law enforcement agency the

1 identity of the person making the communication. The prohibition provided for in
2 this subdivision shall not apply unless the licensed psychotherapist notifies a local
3 law enforcement agency of the threat by that person. The person, however, may
4 own, possess, have custody or control over, or receive or purchase any firearm if a
5 superior court, pursuant to paragraph (3) and upon petition of the person, has
6 found, by a preponderance of the evidence, that the person is likely to use firearms
7 or other deadly weapons in a safe and lawful manner.

8 (2) Upon receipt of the report from the local law enforcement agency pursuant
9 to subdivision (c) of Section 8105, the Department of Justice shall notify by
10 certified mail, return receipt requested, a person subject to this subdivision of the
11 following:

12 (A) That he or she is prohibited from possessing, having custody or control over,
13 receiving, or purchasing any firearm or other deadly weapon for a period of six
14 months commencing from the date that the licensed psychotherapist reports to the
15 local law enforcement agency the identity of the person making the
16 communication. The notice shall state the date when the prohibition commences
17 and ends.

18 (B) That he or she may petition a court, as provided in this subdivision, for an
19 order permitting the person to own, possess, control, receive, or purchase a
20 firearm.

21 (3) Any person who is subject to paragraph (1) may petition the superior court of
22 his or her county of residence for an order that he or she may own, possess, have
23 custody or control over, receive, or purchase firearms. At the time the petition is
24 filed, the clerk of the court shall set a hearing date and notify the person, the
25 Department of Justice, and the district attorney. The people of the State of
26 California shall be the respondent in the proceeding and shall be represented by
27 the district attorney. Upon motion of the district attorney, or upon its own motion,
28 the superior court may transfer the petition to the county in which the person
29 resided at the time of the statements, or the county in which the person made the
30 statements. Within seven days after receiving notice of the petition, the
31 Department of Justice shall file copies of the reports described in Section 8105
32 with the superior court. The reports shall be disclosed upon request to the person
33 and to the district attorney. The district attorney shall be entitled to a continuance
34 of the hearing to a date of not less than 14 days after the district attorney is
35 notified of the hearing date by the clerk of the court. The court, upon motion of the
36 petitioner establishing that confidential information is likely to be discussed during
37 the hearing that would cause harm to the person, shall conduct the hearing in
38 camera with only the relevant parties present, unless the court finds that the public
39 interest would be better served by conducting the hearing in public.
40 Notwithstanding any other provision of law, declarations, police reports, including
41 criminal history information, and any other material and relevant evidence that is
42 not excluded under Section 352 of the Evidence Code, shall be admissible at the
43 hearing under this paragraph. If the court finds by a preponderance of the evidence

1 that the person would be likely to use firearms in a safe and lawful manner, the
2 court shall order that the person may have custody or control over, receive,
3 possess, or purchase firearms. A copy of the order shall be submitted to the
4 Department of Justice. Upon receipt of the order, the department shall delete any
5 reference to the prohibition against firearms from the person's state summary
6 criminal history information.

7 (c) "Discharge," for the purposes of this section, does not include a leave of
8 absence from a facility.

9 (d) "Attending health care professional," as used in this section, means the
10 licensed health care professional primarily responsible for the person's treatment
11 who is qualified to make the decision that the person has a mental disorder and has
12 probable cause to believe that the person is a danger to self or others.

13 (e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and
14 8103, means any weapon, the possession or concealed carrying of which is
15 prohibited by ~~Section 12020~~ any provision listed in Section 16590 of the Penal
16 Code.

17 (f) "Danger to self," as used in subdivision (a), means a voluntary person who
18 has made a serious threat of, or attempted, suicide with the use of a firearm or
19 other deadly weapon.

20 (g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this
21 section shall be a public offense, punishable by imprisonment in the state prison,
22 or in a county jail for not more than one year, by a fine not exceeding one
23 thousand dollars (\$1,000), or by both that imprisonment and fine.

24 (h) The prohibitions set forth in this section shall be in addition to those set forth
25 in Section 8103.

26 (i) Any person admitted and receiving treatment prior to January 1, 1992, shall
27 be governed by this section, as amended by Chapter 1090 of the Statutes of 1990,
28 until discharged from the facility.

29 **Comment.** Subdivision (e) of Section 8100 is amended to reflect nonsubstantive
30 reorganization of the statutes governing control of deadly weapons.

31 **Welf. & Inst. Code § 8103 (amended). Weapons restrictions on specified persons**

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

34 8103. (a)(1) No person who after October 1, 1955, has been adjudicated by a
35 court of any state to be a danger to others as a result of a mental disorder or mental
36 illness, or who has been adjudicated to be a mentally disordered sex offender, shall
37 purchase or receive, or attempt to purchase or receive, or have in his or her
38 possession, custody, or control any firearm or any other deadly weapon unless
39 there has been issued to the person a certificate by the court of adjudication upon
40 release from treatment or at a later date stating that the person may possess a
41 firearm or any other deadly weapon without endangering others, and the person

1 has not, subsequent to the issuance of the certificate, again been adjudicated by a
2 court to be a danger to others as a result of a mental disorder or mental illness.

3 (2) The court shall immediately notify the Department of Justice of the court
4 order finding the individual to be a person described in paragraph (1). The court
5 shall also notify the Department of Justice of any certificate issued as described in
6 paragraph (1).

7 (b)(1) No person who has been found, pursuant to Section 1026 of the Penal
8 Code or the law of any other state or the United States, not guilty by reason of
9 insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal
10 Code in which the victim suffers intentionally inflicted great bodily injury,
11 carjacking or robbery in which the victim suffers great bodily injury, a violation of
12 Section 451 or 452 of the Penal Code involving a trailer coach, as defined in
13 Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph
14 (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision
15 (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code
16 in the first degree, assault with intent to commit murder, a violation of Section 220
17 of the Penal Code in which the victim suffers great bodily injury, a violation of
18 Section ~~12303.1, 12303.2, 12303.3, 12308, 12309, or 12310~~ 18715, 18725, 18740,
19 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great
20 bodily injury, or an act which poses a serious threat of bodily harm to another
21 person, or a violation of the law of any other state or the United States that
22 includes all the elements of any of the above felonies as defined under California
23 law, shall purchase or receive, or attempt to purchase or receive, or have in his or
24 her possession or under his or her custody or control any firearm or any other
25 deadly weapon.

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

28 (c)(1) No person who has been found, pursuant to Section 1026 of the Penal
29 Code or the law of any other state or the United States, not guilty by reason of
30 insanity of any crime other than those described in subdivision (b) shall purchase
31 or receive, or attempt to purchase or receive, or shall have in his or her possession,
32 custody, or control any firearm or any other deadly weapon unless the court of
33 commitment has found the person to have recovered sanity, pursuant to Section
34 1026.2 of the Penal Code or the law of any other state or the United States.

35 (2) The court shall immediately notify the Department of Justice of the court
36 order finding the person to be a person described in paragraph (1). The court shall
37 also notify the Department of Justice when it finds that the person has recovered
38 his or her sanity.

39 (d)(1) No person found by a court to be mentally incompetent to stand trial,
40 pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state
41 or the United States, shall purchase or receive, or attempt to purchase or receive,
42 or shall have in his or her possession, custody, or control any firearm or any other
43 deadly weapon, unless there has been a finding with respect to the person of

1 restoration to competence to stand trial by the committing court, pursuant to
2 Section 1372 of the Penal Code or the law of any other state or the United States.

3 (2) The court shall immediately notify the Department of Justice of the court
4 order finding the person to be mentally incompetent as described in paragraph (1).
5 The court shall also notify the Department of Justice when it finds that the person
6 has recovered his or her competence.

7 (e)(1) No person who has been placed under conservatorship by a court,
8 pursuant to Section 5350 or the law of any other state or the United States, because
9 the person is gravely disabled as a result of a mental disorder or impairment by
10 chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or
11 shall have in his or her possession, custody, or control any firearm or any other
12 deadly weapon while under the conservatorship if, at the time the conservatorship
13 was ordered or thereafter, the court which imposed the conservatorship found that
14 possession of a firearm or any other deadly weapon by the person would present a
15 danger to the safety of the person or to others. Upon placing any person under
16 conservatorship, and prohibiting firearm or any other deadly weapon possession
17 by the person, the court shall notify the person of this prohibition.

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

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

35 (f)(1) No person who has been (A) taken into custody as provided in Section
36 5150 because that person is a danger to himself, herself, or to others, (B) assessed
37 within the meaning of Section 5151, and (C) admitted to a designated facility
38 within the meaning of Sections 5151 and 5152 because that person is a danger to
39 himself, herself, or others, shall own, possess, control, receive, or purchase, or
40 attempt to own, possess, control, receive, or purchase any firearm for a period of
41 five years after the person is released from the facility. A person described in the
42 preceding sentence, however, may own, possess, control, receive, or purchase, or
43 attempt to own, possess, control, receive, or purchase any firearm if the superior

1 court has, pursuant to paragraph (5), found that the People of the State of
2 California have not met their burden pursuant to paragraph (6).

3 (2) For each person subject to this subdivision, the facility shall immediately, on
4 the date of admission, submit a report to the Department of Justice, on a form
5 prescribed by the Department of Justice, containing information that includes, but
6 is not limited to, the identity of the person and the legal grounds upon which the
7 person was admitted to the facility.

8 Any report prescribed by this subdivision shall be confidential, except for
9 purposes of the court proceedings described in this subdivision and for
10 determining the eligibility of the person to own, possess, control, receive, or
11 purchase a firearm.

12 (3) Prior to, or concurrent with, the discharge, the facility shall inform a person
13 subject to this subdivision that he or she is prohibited from owning, possessing,
14 controlling, receiving, or purchasing any firearm for a period of five years.
15 Simultaneously, the facility shall inform the person that he or she may request a
16 hearing from a court, as provided in this subdivision, for an order permitting the
17 person to own, possess, control, receive, or purchase a firearm. The facility shall
18 provide the person with a form for a request for a hearing. The Department of
19 Justice shall prescribe the form. Where the person requests a hearing at the time of
20 discharge, the facility shall forward the form to the superior court unless the
21 person states that he or she will submit the form to the superior court.

22 (4) The Department of Justice shall provide the form upon request to any person
23 described in paragraph (1). The Department of Justice shall also provide the form
24 to the superior court in each county. A person described in paragraph (1) may
25 make a single request for a hearing at any time during the five-year period. The
26 request for hearing shall be made on the form prescribed by the department or in a
27 document that includes equivalent language.

28 (5) Any person who is subject to paragraph (1) who has requested a hearing
29 from the superior court of his or her county of residence for an order that he or she
30 may own, possess, control, receive, or purchase firearms shall be given a hearing.
31 The clerk of the court shall set a hearing date and notify the person, the
32 Department of Justice, and the district attorney. The People of the State of
33 California shall be the plaintiff in the proceeding and shall be represented by the
34 district attorney. Upon motion of the district attorney, or on its own motion, the
35 superior court may transfer the hearing to the county in which the person resided
36 at the time of his or her detention, the county in which the person was detained, or
37 the county in which the person was evaluated or treated. Within seven days after
38 the request for a hearing, the Department of Justice shall file copies of the reports
39 described in this section with the superior court. The reports shall be disclosed
40 upon request to the person and to the district attorney. The court shall set the
41 hearing within 30 days of receipt of the request for a hearing. Upon showing good
42 cause, the district attorney shall be entitled to a continuance not to exceed 14 days
43 after the district attorney was notified of the hearing date by the clerk of the court.

1 If additional continuances are granted, the total length of time for continuances
2 shall not exceed 60 days. The district attorney may notify the county mental health
3 director of the hearing who shall provide information about the detention of the
4 person that may be relevant to the court and shall file that information with the
5 superior court. That information shall be disclosed to the person and to the district
6 attorney. The court, upon motion of the person subject to paragraph (1)
7 establishing that confidential information is likely to be discussed during the
8 hearing that would cause harm to the person, shall conduct the hearing in camera
9 with only the relevant parties present, unless the court finds that the public interest
10 would be better served by conducting the hearing in public. Notwithstanding any
11 other law, declarations, police reports, including criminal history information, and
12 any other material and relevant evidence that is not excluded under Section 352 of
13 the Evidence Code, shall be admissible at the hearing under this section.

14 (6) The people shall bear the burden of showing by a preponderance of the
15 evidence that the person would not be likely to use firearms in a safe and lawful
16 manner.

17 (7) If the court finds at the hearing set forth in paragraph (5) that the people have
18 not met their burden as set forth in paragraph (6), the court shall order that the
19 person shall not be subject to the five-year prohibition in this section on the
20 ownership, control, receipt, possession or purchase of firearms. A copy of the
21 order shall be submitted to the Department of Justice. Upon receipt of the order,
22 the Department of Justice shall delete any reference to the prohibition against
23 firearms from the person's state mental health firearms prohibition system
24 information.

25 (8) Where the district attorney declines or fails to go forward in the hearing, the
26 court shall order that the person shall not be subject to the five-year prohibition
27 required by this subdivision on the ownership, control, receipt, possession, or
28 purchase of firearms. A copy of the order shall be submitted to the Department of
29 Justice. Upon receipt of the order, the Department of Justice shall, within 15 days,
30 delete any reference to the prohibition against firearms from the person's state
31 mental health firearms prohibition system information.

32 (9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to
33 this section to determine the eligibility of persons to own, possess, control,
34 receive, or purchase a firearm if the person is the subject of a criminal
35 investigation, a part of which involves the ownership, possession, control, receipt,
36 or purchase of a firearm.

37 (g)(1) No person who has been certified for intensive treatment under Section
38 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or
39 attempt to own, possess, control, receive, or purchase any firearm for a period of
40 five years.

41 Any person who meets the criteria contained in subdivision (e) or (f) who is
42 released from intensive treatment shall nevertheless, if applicable, remain subject
43 to the prohibition contained in subdivision (e) or (f).

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

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

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

1 against firearms from the person's state mental health firearms prohibition system
2 information.

3 (h) For all persons identified in subdivisions (f) and (g), facilities shall report to
4 the Department of Justice as specified in those subdivisions, except facilities shall
5 not report persons under subdivision (g) if the same persons previously have been
6 reported under subdivision (f).

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

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

15 (j) "Deadly weapon," as used in this section, has the meaning prescribed by
16 Section 8100.

17 **Comment.** Subdivision (b) of Section 8103 is amended to reflect nonsubstantive
18 reorganization of the statutes governing control of deadly weapons.

19 For guidance in applying this section, see Section 16015 (determining existence of prior
20 conviction).

21 **Welf. & Inst. Code § 8104 (amended). Department of Mental Health records requested by**
22 **Department of Justice**

23 SEC. _____. Section 8104 of the Welfare and Institutions Code is amended to
24 read:

25 8104. The State Department of Mental Health shall maintain in a convenient
26 central location and shall make available to the Department of Justice those
27 records that the State Department of Mental Health has in its possession that are
28 necessary to identify persons who come within Section 8100 or 8103. These
29 records shall be made available to the Department of Justice upon request. The
30 Department of Justice shall make these requests only with respect to its duties with
31 regard to applications for permits for, or to carry, or the possession, purchase, or
32 transfer of, explosives as defined in Section 12000 of the Health and Safety Code,
33 devices defined in Section ~~12001~~ 16250, 16530, or 16640 of the Penal Code, in
34 subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code, or in
35 subdivision (a) of Section 16840 of the Penal Code, machineguns as defined in
36 Section ~~12200~~ 16880 of the Penal Code, short-barreled shotguns or short-barreled
37 rifles as defined in Section ~~12020~~ Sections 17170 and 17180 of the Penal Code,
38 assault weapons as defined in Section ~~12276~~ 30510 of the Penal Code, and
39 destructive devices as defined in Section ~~12301~~ 16460 of the Penal Code, or to
40 determine the eligibility of a person to acquire, carry, or possess a firearm,
41 explosive, or destructive device by a person who is subject to a criminal
42 investigation, a part of which involves the acquisition, carrying, or possession of a

1 firearm by that person. These records shall not be furnished or made available to
2 any person unless the department determines that disclosure of any information in
3 the records is necessary to carry out its duties with respect to applications for
4 permits for, or to carry, or the possession, purchase, or transfer of, explosives,
5 destructive devices, devices as defined in Section ~~12001~~ 16250, 16530, or 16640
6 of the Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520 of the
7 Penal Code, or in subdivision (a) of Section 16840 of the Penal Code, short-
8 barreled shotguns, short-barreled rifles, assault weapons, and machineguns, or to
9 determine the eligibility of a person to acquire, carry, or possess a firearm,
10 explosive, or destructive device by a person who is subject to a criminal
11 investigation, a part of which involves the acquisition, carrying, or possession of a
12 firearm by that person.

13 **Comment.** Section 8104 is amended to reflect nonsubstantive reorganization of the statutes
14 governing control of deadly weapons.

15 **Welf. & Inst. Code § 15657.03 (amended). Protective orders for elder or dependant adult**
16 **and other specified persons**

17 SEC. ____ . Section 15657.03 of the Welfare and Institutions Code is amended to
18 read:

19 15657.03. (a) An elder or dependent adult who has suffered abuse as defined in
20 Section 15610.07 may seek protective orders as provided in this section.

21 (b) For the purposes of this section, “protective order” means an order that
22 includes any of the following restraining orders, whether issued ex parte, after
23 notice and hearing, or in a judgment:

24 (1) An order enjoining a party from abusing, intimidating, molesting, attacking,
25 striking, stalking, threatening, sexually assaulting, battering, harassing,
26 telephoning, including, but not limited to, annoying telephone calls as described in
27 Section 653m of the Penal Code, destroying personal property, contacting, either
28 directly or indirectly, by mail or otherwise, or coming within a specified distance
29 of, or disturbing the peace of the petitioner, and, in the discretion of the court, on a
30 showing of good cause, of other named family or household members or a
31 conservator, if any, of the petitioner.

32 (2) An order excluding a party from the petitioner’s residence or dwelling,
33 except that this order shall not be issued if legal or equitable title to, or lease of,
34 the residence or dwelling is in the sole name of the party to be excluded, or is in
35 the name of the party to be excluded and any other party besides the petitioner.

36 (3) An order enjoining a party from specified behavior that the court determines
37 is necessary to effectuate orders described in paragraph (1) or (2).

38 (c) An order may be issued under this section, with or without notice, to restrain
39 any person for the purpose of preventing a recurrence of abuse, if an affidavit
40 shows, to the satisfaction of the court, reasonable proof of a past act or acts of
41 abuse of the petitioning elder or dependent adult.

1 (d)(1) Upon filing a petition for protective orders under this section, the
2 petitioner may obtain a temporary restraining order in accordance with Section
3 527 of the Code of Civil Procedure, except to the extent this section provides a
4 rule that is inconsistent. The temporary restraining order may include any of the
5 protective orders described in subdivision (b). However, the court may issue an ex
6 parte order excluding a party from the petitioner's residence or dwelling only on a
7 showing of all of the following:

8 (A) Facts sufficient for the court to ascertain that the party who will stay in the
9 dwelling has a right under color of law to possession of the premises.

10 (B) That the party to be excluded has assaulted or threatens to assault the
11 petitioner, other named family or household member of the petitioner, or
12 conservator of the petitioner.

13 (C) That physical or emotional harm would otherwise result to the petitioner,
14 other named family or household member of the petitioner, or conservator of the
15 petitioner.

16 (2) If a temporary restraining order is granted without notice, the matter shall be
17 made returnable on an order requiring cause to be shown why a permanent order
18 should not be granted, on the earliest day that the business of the court will permit,
19 but not later than 20 days or, if good cause appears to the court, 25 days from the
20 date the temporary restraining order is granted, unless the order is otherwise
21 modified or terminated by the court.

22 (e) The court may issue, upon notice and a hearing, any of the orders set forth in
23 subdivision (b). The court may issue, after notice and hearing, an order excluding
24 a person from a residence or dwelling if the court finds that physical or emotional
25 harm would otherwise result to the petitioner, other named family or household
26 member of the petitioner, or conservator of the petitioner.

27 (f) In the discretion of the court, an order issued after notice and a hearing under
28 this section may have a duration of not more than three years, subject to
29 termination or modification by further order of the court either on written
30 stipulation filed with the court or on the motion of a party. These orders may be
31 renewed upon the request of a party, either for three years or permanently, without
32 a showing of any further abuse since the issuance of the original order, subject to
33 termination or modification by further order of the court either on written
34 stipulation filed with the court or on the motion of a party. The failure to state the
35 expiration date on the face of the form creates an order with a duration of three
36 years from the date of issuance.

37 (g) Upon the filing of a petition for protective orders under this section, the
38 respondent shall be personally served with a copy of the petition, notice of the
39 hearing or order to show cause, temporary restraining order, if any, and any
40 affidavits in support of the petition. Service shall be made at least five days before
41 the hearing. The court may, on motion of the petitioner or on its own motion,
42 shorten the time for service on the respondent.

1 (h) The court may, upon the filing of an affidavit by the applicant that the
2 respondent could not be served within the time required by statute, reissue an
3 order previously issued and dissolved by the court for failure to serve the
4 respondent. The reissued order shall be made returnable on the earliest day that the
5 business of the court will permit, but not later than 20 days or, if good cause
6 appears to the court, 25 days from the date of reissuance. The reissued order shall
7 state on its face the date of expiration of the order.

8 (i)(1) If a person named in an order issued under this section, after a hearing, has
9 not been served personally with the order but has received actual notice of the
10 existence and substance of the order through personal appearance in court to hear
11 the terms of the order from the court, no additional proof of service is required for
12 enforcement of the order.

13 (2) If the person named in a temporary restraining order is personally served
14 with the order and notice of hearing with respect to a restraining order or
15 protective order based thereon, but the person does not appear at the hearing,
16 either personally or by counsel, and the terms and conditions of the restraining
17 order or protective order are identical to the temporary restraining order, except
18 for the duration of the order, then the restraining order or protective order may be
19 served on the person by first-class mail sent to that person at the most current
20 address for the person available to the court.

21 (3) The judicial form for orders issued pursuant to this subdivision shall contain
22 a statement in substantially the following form: “NO ADDITIONAL PROOF OF
23 SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT
24 BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING
25 WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN PERSONALLY
26 SERVED WITH A TEMPORARY RESTRAINING ORDER OR EMERGENCY
27 PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO NOT
28 APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND
29 A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE
30 HEARING THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY
31 RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY
32 OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE
33 FOLLOWING ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR
34 YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY
35 ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE,
36 CALL THE CLERK OF THE COURT AT _____.”

37 (j)(1) The court shall order the petitioner or the attorney for the petitioner to
38 deliver, or the clerk of the court to mail, a copy of an order issued under this
39 section, or a reissuance, extension, modification, or termination of the order, and
40 any subsequent proof of service, by the close of the business day on which the
41 order, reissuance, extension, modification, or termination was made, to each local
42 law enforcement agency designated by the petitioner or the attorney for the
43 petitioner having jurisdiction over the residence of the petitioner, and to any

1 additional law enforcement agencies within the court's discretion as are requested
2 by the petitioner. Each appropriate law enforcement agency shall make available
3 information as to the existence and current status of these orders to law
4 enforcement officers responding to the scene of reported abuse.

5 (2) An order issued under this section shall, on request of the petitioner, be
6 served on the respondent, whether or not the respondent has been taken into
7 custody, by any law enforcement officer who is present at the scene of reported
8 abuse involving the parties to the proceeding. The petitioner shall provide the
9 officer with an endorsed copy of the order and a proof of service, which the officer
10 shall complete and send to the issuing court.

11 (3) Upon receiving information at the scene of an incident of abuse that a
12 protective order has been issued under this section, or that a person who has been
13 taken into custody is the respondent to that order, if the protected person cannot
14 produce an endorsed copy of the order, a law enforcement officer shall
15 immediately attempt to verify the existence of the order.

16 (4) If the law enforcement officer determines that a protective order has been
17 issued, but not served, the officer shall immediately notify the respondent of the
18 terms of the order and where a written copy of the order can be obtained, and the
19 officer shall at that time also enforce the order. The law enforcement officer's
20 verbal notice of the terms of the order shall constitute service of the order and is
21 sufficient notice for the purposes of this section and for the purposes of Section
22 273.6 of the Penal Code.

23 (k) Nothing in this section shall preclude either party from representation by
24 private counsel or from appearing on the party's own behalf.

25 (l) There is no filing fee for a petition, response, or paper seeking the reissuance,
26 modification, or enforcement of a protective order filed in a proceeding brought
27 pursuant to this section.

28 (m) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the
29 Government Code, a petitioner shall not be required to pay a fee for law
30 enforcement to serve an order issued under this chapter.

31 (n) The prevailing party in any action brought under this section may be
32 awarded court costs and attorney's fees, if any.

33 (o)(1) An order issued pursuant to this section shall prohibit the person subject
34 to it from owning, possessing, purchasing, receiving, or attempting to purchase or
35 receive, a firearm.

36 (2) Paragraph (1) shall not apply to a case consisting solely of financial abuse
37 unaccompanied by force, threat, harassment, intimidation, or any other form of
38 abuse.

39 (3) The court shall order a person subject to a protective order issued under this
40 section to relinquish any firearms he or she owns or possesses pursuant to Section
41 527.9 of the Code of Civil Procedure.

1 (4) Every person who owns, possesses, purchases, or receives, or attempts to
2 purchase or receive a firearm while the protective order is in effect is punishable
3 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

4 (p) Any willful disobedience of any temporary restraining order or restraining
5 order after hearing granted under this section is punishable pursuant to Section
6 273.6 of the Penal Code.

7 (q) This section does not apply to any action or proceeding covered by Title
8 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code,
9 by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of
10 Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family
11 Code. Nothing in this section shall preclude a petitioner's right to use other
12 existing civil remedies.

13 (r) The Judicial Council shall promulgate forms and instructions therefor, rules
14 for service of process, scheduling of hearings, and any other matters required by
15 this section. The petition and response forms shall be simple and concise.

16 (s) This section shall become operative on January 1, 2010.

17 **Comment.** Subdivision (o) of Section 15657.03 is amended to reflect nonsubstantive
18 reorganization of the statutes governing control of deadly weapons.

19 **Note.** The text of Section 15657.03 reflects the enactment of AB 225 (Beall), 2008 Cal. Stat.
20 ch. 480, § 2, which will be operative on January 1, 2010.

21 Amendments to Section 15657.03 by the enactment of the same bill, which are to be repealed
22 on January 1, 2010, are not shown. See AB 225 (Beall), 2008 Cal. Stat. ch. 480, § 1.