

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

## Technical and Minor Substantive Statutory Corrections: References to Recording Technology

April 2007

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

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

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

California Law Revision Commission

4000 Middlefield Road, Room D-1

Palo Alto, CA 94303-4739

650-494-1335

<commission@clrc.ca.gov>

## SUMMARY OF TENTATIVE RECOMMENDATION

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

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

The Commission solicits public comment on these proposed revisions.

This recommendation was prepared pursuant to Government Code Section 8298.

TECHNICAL AND MINOR SUBSTANTIVE  
STATUTORY CORRECTIONS: REFERENCES TO  
RECORDING TECHNOLOGY

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

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

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

14 **Introduction**

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

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

24 19870. ....

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

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

---

1. 2002 Cal. Stat. ch. 1068.

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

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

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

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

14    **Videotaping of Testimony in Criminal Case**

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

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

# CONTENTS

PROPOSED LEGISLATION .....	1
BUSINESS AND PROFESSIONS CODE.....	1
Bus. & Prof. Code § 3635 (amended). Continuing education .....	2
Bus. & Prof. Code § 4846.5 (amended). Continuing education .....	2
Bus. & Prof. Code § 8027 (amended). Court reporting school requirements.....	5
Bus. & Prof. Code § 17539.55 (amended). Sweepstakes using 900 numbers .....	9
Bus. & Prof. Code § 19513 (amended). Examinations .....	10
Bus. & Prof. Code § 19576 (amended). Recording of race for commercial purpose.....	11
Bus. & Prof. Code § 19861 (amended). Licensing of gambling establishment.....	11
Bus. & Prof. Code § 19870 (amended). Grant or denial of license .....	12
Bus. & Prof. Code § 21701.1 (amended). Transport of storage containers .....	13
Bus. & Prof. Code § 25658.4 (amended). Professional competency examination.....	15
CIVIL CODE .....	17
Civ. Code § 916 (amended). Inspection and testing .....	17
Civ. Code § 922 (amended). Recording of repair .....	18
Civ. Code § 1799.3 (amended). Disclosure of personal information .....	18
Civ. Code § 3344.1 (amended). Use of deceased personality’s likeness .....	19
CODE OF CIVIL PROCEDURE.....	22
Code Civ. Proc. § 129 (amended). Reproduction of image of deceased person.....	22
Code Civ. Proc. § 1033.5 (amended). Allowable costs.....	23
Code Civ. Proc. § 2025.560 (amended). Recording of deposition testimony.....	25
EDUCATION CODE.....	25
Educ. Code § 8971 (amended). Definitions .....	25
Educ. Code § 17002 (amended). Definitions .....	26
Educ. Code § 18032 (amended). Library policy regarding video recordings.....	29
Educ. Code § 19323 (amended). Loan of audio recordings .....	30
Educ. Code § 32255 (amended). Definitions .....	30
Educ. Code § 49091.10 (amended). Parental right of inspection .....	31
Educ. Code § 52740 (amended). Instructional material relating to certain important historical events.....	31
Educ. Code § 52742 (amended). Review of films and video recordings .....	32
Educ. Code § 52743 (amended). Availability of films and video recordings.....	32
Educ. Code § 56341.1 (amended). Individualized education programs.....	32
Educ. Code § 60204 (amended). Duties of commission .....	34
Educ. Code § 94975 (amended). Procedure for notice and hearing .....	35
ELECTION CODE.....	40
Elec. Code § 2052 (amended). Visually impaired individuals.....	40
Elec. Code § 2053 (amended). Visually Impaired Voter Assistance Advisory Board.....	40
Elec. Code § 9082.5 (amended). Audio recording of state ballot pamphlet .....	41
Elec. Code § 18541 (amended). Dissuading voters .....	41
EVIDENCE CODE.....	41
Evid. Code § 795 (amended). Professional competency examination .....	41
Evid. Code § 1118 (amended). Oral agreement.....	42
Evid. Code § 1294 (amended). Prior inconsistent statement .....	43

FAMILY CODE.....	43
Fam. Code § 3170 (amended). Custody or visitation issues .....	43
Fam. Code § 7572 (amended). Written informational material.....	44
Fam. Code § 10005 (amended). Additional duties of family law facilitator .....	44
Fam. Code § 20034 (amended). Duties of Attorney-Mediator .....	46
GOVERNMENT CODE.....	47
Gov't Code § 8880.30 (amended). Regulations for determining lottery winners .....	47
Gov't Code § 11124.1 (amended). Recording of public meeting.....	47
Gov't Code § 11130 (amended). Action to stop or prevent violation of meeting provision .....	48
Gov't Code § 12811.3 (amended). Employee transfer .....	49
Gov't Code § 14999.31 (amended). Permit to engage in film production.....	51
Gov't Code § 26202.6 (amended). Recordings of video monitoring and telephone and radio communications.....	51
Gov't Code § 26206.7 (amended). Destruction of duplicates of county records .....	52
Gov't Code § 26206.8 (amended). Transit agency security systems .....	52
Gov't Code § 27491.47 (amended). Removal of corneal eye tissue .....	53
Gov't Code § 34090.6 (amended). Destruction by department of recordings of routine video monitoring and telephone and radio communications .....	54
Gov't Code § 34090.7 (amended). Destruction by legislative body of recordings of routine video monitoring and telephone and radio communications.....	55
Gov't Code § 34090.8 (amended). Transit agency security systems .....	55
Gov't Code § 50028 (amended). Coin-operated viewing machines.....	56
Gov't Code § 53160 (amended). Destruction of recordings of routine video monitoring and telephone and radio communications.....	57
Gov't Code § 53161 (amended). Destruction by legislative body of recordings of routine video monitoring and telephone and radio communications.....	58
Gov't Code § 53162 (amended). Transit agency security systems.....	58
Gov't Code § 54953.5 (amended). Recording of public meeting.....	59
Gov't Code § 54960 (amended). Action to stop or prevent violation of meeting provision .....	59
Gov't Code § 68151 (amended). Definitions .....	61
HEALTH AND SAFETY CODE .....	61
Health & Safety Code § 1569.69 (amended). Training of employees.....	61
Health & Safety Code § 1736.5 (amended). Grounds for denial of application or certificate.....	64
Health & Safety Code § 7150.5 (amended). Anatomical gift.....	68
Health & Safety Code § 7151.5 (amended). Removal of body part from decedent.....	69
Health & Safety Code § 7158.3 (amended). Duties of donee of anatomical gift .....	71
Health & Safety Code § 13220 (amended). Furnishing emergency procedures to persons entering buildings.....	73
Health & Safety Code § 13221 (amended). Regulations for furnishing emergency procedures.....	74
Health & Safety Code § 25201.11 (amended). Departmental copyright protection and other rights.....	74
Health & Safety Code § 40828 (amended). Testimony by members of public .....	75
Health & Safety Code § 100171 (amended). Adjudicative hearing .....	75
Health & Safety Code § 127240 (amended). Informal public hearing.....	77
INSURANCE CODE .....	79
Ins. Code § 1758.97 (amended). Prerequisites to sale or offer to sell insurance .....	79
Ins. Code § 2071.1 (amended). Examination of insured .....	80
PENAL CODE .....	81
Penal Code § 298.1 (amended). Refusal to give specimen, sample or impression .....	81
Penal Code § 599aa (amended). Seizure of birds, animals and related items.....	83

Penal Code § 868.7 (amended). Closure of examination .....	85
Penal Code § 1191.15 (amended). Victim statement .....	86
Penal Code § 1203.098. (amended). Batterers' intervention program facilitators .....	87
Penal Code § 1346 (amended). Recording of testimony of minor or developmentally disabled victim .....	88
Penal Code § 1346.1 (amended). Recording of testimony of victim of spousal rape or infliction of corporal injury .....	89
Penal Code § 1347 (amended). Testimony of minors .....	90
Penal Code § 1347.5 (amended). Testimony of disabled victims.....	93
Penal Code § 3043 (amended). Hearing relating to parole suitability or setting of parole date .....	98
PUBLIC RESOURCES CODE.....	99
Pub. Res. Code § 4423.1 (amended). Suspension, restriction, or prohibition of permit burning .....	99
REVENUE AND TAXATION CODE.....	100
Rev. & Tax Code § 1611 (amended). Record of hearing .....	100
WELFARE AND INSTITUTIONS CODE.....	100
Welf. & Inst. Code § 19639 (amended). Rules and regulations .....	100





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

## PROPOSED LEGISLATION

### BUSINESS AND PROFESSIONS CODE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (C) The American Veterinary Medical Association.

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

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

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

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

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

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

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

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

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

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

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

27 (4) For good cause, the board may adopt an order specifying, on a prospective  
28 basis, that a provider of continuing veterinary medical education authorized  
29 pursuant to ~~paragraphs (1) or (2)~~ paragraph (1) or (3) is no longer an acceptable  
30 provider.

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

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

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

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

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

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

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

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

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

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

41 Subdivision (b)(4) is amended to correct an erroneous cross-reference.

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

2 SEC. \_\_\_\_\_. Section 8027 of the Business and Professions Code is amended to  
3 read:

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

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

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

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

1 recognition may be withdrawn by the board for failure to comply with all  
2 applicable laws and regulations.

3 (e) Application for recognition of a court reporting school shall be made upon a  
4 form prescribed by the board and shall be accompanied by all evidence,  
5 statements, or documents requested. Each branch, extension center, or off-campus  
6 facility requires separate application.

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

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

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

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

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

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

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

41 (l) Each court reporting school shall file with the board, not later than June 30 of  
42 each year, a current school catalog that shows all course offerings and staff, and  
43 for private schools, the owner, except that where there have been no changes to the

1 catalog within the previous year, no catalog need be sent. In addition, each school  
2 shall also file with the board a statement certifying whether the school is in  
3 compliance with all statutes and the rules and regulations of the board, signed by  
4 the responsible court reporting program manager.

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

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

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

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

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

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

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

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

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

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

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

1 (r) Each enrolled student shall be provided written notification of any change in  
2 qualification or graduation requirements that is being implemented due to the  
3 requirements of any one of the school's oversight agencies. This notice shall be  
4 provided to each affected student at least 30 days before the effective date of the  
5 change and shall state the new requirement and the name, address, and telephone  
6 number of the agency that is requiring it of the school. Each student shall initial  
7 and date a document acknowledging receipt of that information and that  
8 document, or a copy thereof, shall be made part of the student's permanent file.

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

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

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

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

22 (w) Each school shall counsel each student a minimum of one time within each  
23 12-month period to identify the level of attendance and progress, and the  
24 prognosis for completing the requirements to become eligible to sit for the state  
25 licensing examination. If the student has not progressed in accordance with the  
26 board-approved benchmarks for that school, the student shall be counseled a  
27 minimum of one additional time within that same 12-month period.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

39 SEC. \_\_\_\_\_. Section 17539.55 of the Business and Professions Code is amended  
40 to read:

41 17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through  
42 the use of a 900 number, unless the information provider registers with the

1 Department of Justice as provided in this section within 10 days after causing any  
2 advertisement for the sweepstakes to be directed to any person in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 SEC. \_\_\_\_\_. Section 19513 of the Business and Professions Code is amended to  
33 read:

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

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

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

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

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

8 SEC. \_\_\_\_\_. Section 19576 of the Business and Professions Code is amended to  
9 read:

10 19576. (a) No person may furnish ~~a tape~~ an audio or video recording of any  
11 quarter horse race occurring in this state to any other person either within or  
12 outside of the state for any commercial purpose, including the use of the ~~tape~~  
13 recording in any type of video game, without first securing the consent of the  
14 racing association conducting the meeting, the organization representing horsemen  
15 participating in the meeting, and the board.

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

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

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

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

29 SEC. \_\_\_\_\_. Section 19861 of the Business and Professions Code is amended to  
30 read:

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

1 open to members of the private club and their spouses in accordance with  
2 membership criteria in effect as of December 31, 1997.

3 A gambling establishment meeting these criteria, in addition to the other  
4 requirements of this chapter, may be licensed to operate as a private club gambling  
5 establishment until November 30, 2003, or until the ownership or operation of the  
6 gambling establishment changes from the ownership or operation as of January 1,  
7 1998, whichever occurs first. Operation of the gambling establishments after this  
8 date shall only be permitted if the local jurisdiction approves an ordinance,  
9 pursuant to Sections 19961 and 19962, authorizing the operation of gambling  
10 establishments that are open to the public. The commission shall adopt regulations  
11 implementing this section. Prior to the commission's issuance of a license to a  
12 private club, the division shall ensure that the ownership of the gambling  
13 establishment has remained constant since January 1, 1998, and the operation of  
14 the gambling establishment has not been leased to any third party.

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

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

20 SEC. \_\_\_\_\_. Section 19870 of the Business and Professions Code is amended to  
21 read:

22 19870. (a) The commission, after considering the recommendation of the  
23 director and any other testimony and written comments as may be presented at the  
24 meeting, or as may have been submitted in writing to the commission prior to the  
25 meeting, may either deny the application or grant a license to an applicant who it  
26 determines to be qualified to hold the license.

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

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

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

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

42 **Comment.** Section 19870 is amended to reflect advances in recording technology and for  
43 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

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

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

4 SEC. \_\_\_\_\_. Section 21701.1 of the Business and Professions Code is amended  
5 to read:

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

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

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

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

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

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

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

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

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

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

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

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

4 (G) Conspicuous disclosure in bold text of the allocation of responsibility for the  
5 risk of loss or damage to the customer’s goods, including any disclaimer of the  
6 company’s liability, and the procedure for presenting any claim regarding loss or  
7 damage to the company.

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

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

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

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

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

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

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

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

41 (d) For purposes of this chapter, “individual storage container” means a  
42 container that meets all of the following requirements:

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

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

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

5 (e) Nothing in this section shall be construed to limit the authority of the Public  
6 Utilities Commission to investigate and commence an appropriate enforcement  
7 action pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the  
8 Public Utilities Code against any person transporting household goods in  
9 individual storage containers in a manner other than that described in this section.

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

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

15 SEC. \_\_\_\_\_. Section 25658.4 of the Business and Professions Code is amended  
16 to read:

17 25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of  
18 alcoholic beverages unless the clerk executes under penalty of perjury on the first  
19 day he or she makes that sale an application and acknowledgment. The application  
20 and acknowledgment shall be in a form understandable to the clerk.

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

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

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

27 (C) Hours of operation as provided in Article 2 (commencing with Section  
28 25630) of Chapter 16.

29 (D) The prohibitions contained in subdivision (a) of Section 25602 and Section  
30 25602.1 pertaining to sales to an intoxicated person.

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

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

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

40 (3) The licensee shall keep the executed application and acknowledgment on the  
41 premises at all times and available for inspection by the department. A licensee  
42 with more than one licensed off-sale premises in the state may comply with this

1 subdivision by maintaining an executed application and acknowledgment at a  
2 designated licensed premises, regional office, or headquarters office in the state.  
3 An executed application and acknowledgment maintained at the designated  
4 locations shall be valid for all licensed off-sale premises owned by the licensee.  
5 Any licensee maintaining an application and acknowledgment at a designated site  
6 other than the individual licensed off-sale premises shall notify the department in  
7 advance and in writing of the site where the application and acknowledgment shall  
8 be maintained and available for inspection. A licensee electing to maintain  
9 application and acknowledgments at a designated site other than the licensed  
10 premises shall maintain at each licensed premises a notice of where the executed  
11 application and acknowledgments are located. Any licensee with more than one  
12 licensed off-sale premises who elects to maintain the application and  
13 acknowledgments at a designated site other than each licensed premises shall  
14 provide the department, upon written demand, a copy of any employee's executed  
15 application and acknowledgment within 10 business days. A violation of this  
16 subdivision by a licensee constitutes grounds for discipline by the department.

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

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

30 (d) Nonprofit organizations or licensees may obtain ~~videotapes~~ video recordings  
31 and other training materials from the department on the Licensee Education on  
32 Alcohol and Drugs (LEAD) program. The ~~videotapes~~ video recordings and  
33 training materials may be updated periodically and may be provided in English  
34 and other languages, and when made available by the department, shall be  
35 provided at cost.

36 (e) As used in this section:

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

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

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





1 prior to the inspection as to the identity of all persons or entities invited to attend.  
2 This subdivision does not apply to the builder's insurance company. Except with  
3 respect to any claims involving a repair actually conducted under this chapter,  
4 nothing in this subdivision shall be construed to relieve a subcontractor, design  
5 professional, individual product manufacturer, or material supplier of any liability  
6 under an action brought by a claimant.

7 **Comment.** Subdivision (a) of Section 916 is amended to reflect advances in recording  
8 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
9 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio  
10 technology," "audio recording," or "audio record," as context required).

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

12 SEC. \_\_\_\_\_. Section 922 of the Civil Code is amended to read:

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

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

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

23 SEC. \_\_\_\_\_. Section 1799.3 of the Civil Code is amended to read:

24 1799.3. (a) No person providing video ~~cassette~~ recording sales or rental services  
25 shall disclose any personal information or the contents of any record, including  
26 sales or rental information, which is prepared or maintained by that person, to any  
27 person, other than the individual who is the subject of the record, without the  
28 written consent of that individual.

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

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

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

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

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

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

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

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

41 (d)(1) Any person who willfully violates this section on three or more occasions  
42 in any six-month period shall, in addition, be subject to a civil penalty not to

1 exceed five hundred dollars (\$500) for each violation, which may be assessed and  
2 recovered in a civil action brought in the name of the people of the State of  
3 California by the Attorney General, by any district attorney or city attorney, or by  
4 a city prosecutor in any city or city and county having a full-time city prosecutor,  
5 in any court of competent jurisdiction.

6 (2) If the action is brought by the Attorney General, one-half of the penalty  
7 collected shall be paid to the treasurer of the county in which the judgment was  
8 entered, and one-half to the General Fund. If the action is brought by a district  
9 attorney, the penalty collected shall be paid to the treasurer of the county in which  
10 the judgment was entered. If the action is brought by a city attorney or city  
11 prosecutor, one-half of the penalty shall be paid to the treasurer of the city in  
12 which the judgment was entered, and one-half to the treasurer of the county in  
13 which the judgment was entered.

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

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

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

21 SEC. \_\_\_\_\_. Section 3344.1 of the Civil Code is amended to read:

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

39 (2) For purposes of this subdivision, a play, book, magazine, newspaper, musical  
40 composition, audiovisual work, radio or television program, single and original  
41 work of art, work of political or newsworthy value, or an advertisement or  
42 commercial announcement for any of these works, shall not be considered a

1 product, article of merchandise, good, or service if it is fictional or nonfictional  
2 entertainment, or a dramatic, literary, or musical work.

3 (3) If a work that is protected under paragraph (2) includes within it a use in  
4 connection with a product, article of merchandise, good, or service, this use shall  
5 not be exempt under this subdivision, notwithstanding the unprotected use's  
6 inclusion in a work otherwise exempt under this subdivision, if the claimant  
7 proves that this use is so directly connected with a product, article of merchandise,  
8 good, or service as to constitute an act of advertising, selling, or soliciting  
9 purchases of that product, article of merchandise, good, or service by the deceased  
10 personality without prior consent from the person or persons specified in  
11 subdivision (c).

12 (b) The rights recognized under this section are property rights, freely  
13 transferable, in whole or in part, by contract or by means of trust or testamentary  
14 documents, whether the transfer occurs before the death of the deceased  
15 personality, by the deceased personality or his or her transferees, or, after the death  
16 of the deceased personality, by the person or persons in whom the rights vest  
17 under this section or the transferees of that person or persons.

18 (c) The consent required by this section shall be exercisable by the person or  
19 persons to whom the right of consent, or portion thereof, has been transferred in  
20 accordance with subdivision (b), or if no transfer has occurred, then by the person  
21 or persons to whom the right of consent, or portion thereof, has passed in  
22 accordance with subdivision (d).

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

27 (1) The entire interest in those rights belong to the surviving spouse of the  
28 deceased personality unless there are any surviving children or grandchildren of  
29 the deceased personality, in which case one-half of the entire interest in those  
30 rights belong to the surviving spouse.

31 (2) The entire interest in those rights belong to the surviving children of the  
32 deceased personality and to the surviving children of any dead child of the  
33 deceased personality unless the deceased personality has a surviving spouse, in  
34 which case the ownership of a one-half interest in rights is divided among the  
35 surviving children and grandchildren.

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

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

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

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

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

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

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

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

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

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

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

5 (k) The use of a name, voice, signature, photograph, or likeness in a commercial  
6 medium shall not constitute a use for which consent is required under subdivision  
7 (a) solely because the material containing the use is commercially sponsored or  
8 contains paid advertising. Rather, it shall be a question of fact whether or not the  
9 use of the deceased personality's name, voice, signature, photograph, or likeness  
10 was so directly connected with the commercial sponsorship or with the paid  
11 advertising as to constitute a use for which consent is required under subdivision  
12 (a).

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

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

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

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

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

34 **CODE OF CIVIL PROCEDURE**

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

36 SEC. \_\_\_\_\_. Section 129 of the Code of the Civil Procedure is amended to read:

37 129. Notwithstanding any other provision of law, no copy, reproduction, or  
38 facsimile of any kind shall be made of any photograph, negative, or print,  
39 including instant photographs and video ~~tapes~~ recordings, of the body, or any  
40 portion of the body, of a deceased person, taken by or for the coroner at the scene  
41 of death or in the course of a post mortem examination or autopsy made by or

1 caused to be made by the coroner, except for use in a criminal action or  
2 proceeding in this state which relates to the death of that person, or except as a  
3 court of this state permits, by order after good cause has been shown and after  
4 written notification of the request for the court order has been served, at least five  
5 days before the order is made, upon the district attorney of the county in which the  
6 post mortem examination or autopsy has been made or caused to be made.

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

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

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

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

18 SEC. \_\_\_\_\_. Section 1033.5 of the Code of Civil Procedure is amended to read:

19 1033.5. (a) The following items are allowable as costs under Section 1032:

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

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

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

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

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

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

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

39 (D) When service is by a means other than that set forth in subparagraph (A),  
40 (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the  
41 amount allowed to a public officer in this state for such service, except that the

1 court may allow the sum actually incurred in effecting service upon application  
2 pursuant to paragraph (4) of subdivision (c).

3 (5) Expenses of attachment including keeper's fees.

4 (6) Premiums on necessary surety bonds.

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

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

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

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

9 (A) Contract.

10 (B) Statute.

11 (C) Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

9 SEC. \_\_\_\_\_. Section 2025.560 of the Code of Civil Procedure is amended to  
10 read:

11 2025.560. (a) An audio or video ~~record~~ recording of deposition testimony made  
12 by, or at the direction of, any party, including a certified ~~tape~~ recording made by  
13 an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340,  
14 shall not be filed with the court. Instead, the operator shall retain custody of that  
15 ~~record~~ recording and shall store it under conditions that will protect it against loss,  
16 destruction, or tampering, and preserve as far as practicable the quality of the  
17 recording and the integrity of the testimony and images it contains.

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

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

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

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

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

36 EDUCATION CODE

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

38 SEC. \_\_\_\_\_. Section 8971 of the Education Code is amended to read:

39 8971. As used in this chapter, the following terms shall have the following  
40 meanings:

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

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

12 (c) “Integrated, experiential, and developmentally appropriate educational  
13 program” means a program that is designed around the abilities and interests of the  
14 children in the program and one in which children learn about the various subjects  
15 simultaneously, as opposed to segmented courses, and through “hands-on” or  
16 “active learning” teaching methods that are more appropriate for young children  
17 than the academic “textbook” approach.

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

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

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

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

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

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

34 SEC. \_\_\_\_\_. Section 17002 of the Education Code is amended to read:

35 17002. The following terms wherever used or referred to in this chapter, shall  
36 have the following meanings, respectively, unless a different meaning appears  
37 from the context:

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

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

41 (c) “Cost of project” includes, but is not limited to, the cost of all real estate  
42 property rights, and easements acquired, and the cost of developing the site and

1 streets and utilities immediately adjacent thereto, the cost of construction,  
2 reconstruction, or modernization of buildings and the furnishing and equipping,  
3 including the purchase of educational technology hardware, of those buildings, the  
4 supporting wiring and cabling, and the technological modernization of existing  
5 buildings to support that hardware, the cost of plans, specifications, surveys, and  
6 estimates of costs, and other expenses that are necessary or incidental to the  
7 financing of the project. For purposes of this section, “educational technology  
8 hardware” includes, but is not limited to, computers, telephones, televisions, and  
9 video ~~cassette recorders~~ recording equipment.

10 (d)(1) “Good repair” means the facility is maintained in a manner that assures  
11 that it is clean, safe, and functional as determined pursuant to a school facility  
12 inspection and evaluation instrument developed by the Office of Public School  
13 Construction and approved by the board or a local evaluation instrument that  
14 meets the same criteria. Until the school facility inspection and evaluation  
15 instrument is approved by the board, “good repair” means the facility is  
16 maintained in a manner that assures that it is clean, safe, and functional as  
17 determined by the interim evaluation instrument developed by the Office of Public  
18 School Construction or a local evaluation instrument that meets the same criteria  
19 as the interim evaluation instrument. The school facility inspection and evaluation  
20 instrument and local evaluation instruments that meet the minimum criteria of this  
21 subdivision shall not require capital enhancements beyond the standards to which  
22 the facility was designed and constructed. In order to provide that school facilities  
23 are reviewed to be clean, safe, and functional, the school facility inspection and  
24 evaluation instrument and local evaluation instruments shall include at least the  
25 following criteria:

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

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

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

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

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

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

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

41 (F) Hazardous and flammable materials are stored properly. No evidence of  
42 peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or

1 asbestos exposure are evident. There is no apparent evidence of hazardous  
2 materials that may pose a threat to the health and safety of pupils or staff.

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

8 (H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all  
9 emergency equipment and systems appear to be functioning properly. Fire alarm  
10 pull stations are clearly visible. Fire extinguishers are current and placed in all  
11 required areas, including every classroom and assembly area. Emergency exits are  
12 clearly marked and unobstructed.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (S) Overall cleanliness of the school grounds, buildings, common areas, and  
43 individual rooms demonstrates that all areas appear to have been cleaned

1 regularly, and are free of accumulated refuse and unabated graffiti. Restrooms,  
2 drinking fountains, and food preparation or serving areas appear to have been  
3 cleaned each day that the school is in session.

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

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

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

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

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

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

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

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

33 SEC. \_\_\_\_\_. Section 18032 of the Education Code is amended to read:

34 18032. (a) Every public library that receives state funds pursuant to this chapter  
35 and that provides public access to ~~motion picture videotapes~~ video recordings  
36 shall, by a majority vote of the governing board, adopt a policy regarding access  
37 by minors to ~~motion picture videotapes~~ video recordings by January 1, 2000.

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

41 **Comment.** Section 18032 is amended to reflect advances in recording technology and for  
42 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

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

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

4 SEC. \_\_\_\_\_. Section 19323 of the Education Code is amended to read:

5 19323. The State Librarian shall make available in the state on a loan basis to  
6 legally blind persons, or to persons who are visually or physically handicapped to  
7 such an extent that they are unable to read conventional printed materials, ~~in the~~  
8 ~~state~~ ~~tape~~ audio recordings of books and other related materials. The ~~tape~~ audio  
9 recordings shall be selected by the State Library on the same basis as the State  
10 Library’s general program for providing library materials to legally blind readers.

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

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

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

17 SEC. \_\_\_\_\_. Section 32255 of the Education Code is amended to read:

18 32255. As used in this chapter:

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

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

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

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

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

2 SEC. \_\_\_\_\_. Section 49091.10 of the Education Code is amended to read:

3 49091.10. (a) All primary supplemental instructional materials and assessments,  
4 including textbooks, teacher’s manuals, films, ~~tapes~~ audio and video recordings,  
5 and software shall be compiled and stored by the classroom instructor and made  
6 available promptly for inspection by a parent or guardian in a reasonable  
7 timeframe or in accordance with procedures determined by the governing board of  
8 the school district.

9 (b) A parent or guardian has the right to observe instruction and other school  
10 activities that involve his or her child in accordance with procedures determined  
11 by the governing board of the school district to ensure the safety of pupils and  
12 school personnel and to prevent undue interference with instruction or harassment  
13 of school personnel. Reasonable accommodation of parents and guardians shall be  
14 considered by the governing board of the school district. Upon written request by  
15 the parent or guardian, school officials shall arrange for the parental observation of  
16 the requested class or classes or activities by that parent or guardian in a  
17 reasonable timeframe and in accordance with procedures determined by the  
18 governing board of the school district.

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

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

25 SEC. \_\_\_\_\_. Section 52740 of the Education Code is amended to read:

26 52740. (a) It is the intent of the Legislature to provide accurate instructional  
27 materials to schools on all of the following topics:

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

30 (2) The Armenian genocide.

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

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

39 (c) The Legislature hereby finds and declares that films and ~~videotapes~~ video  
40 recordings giving a historically accurate depiction of the internment in the United  
41 States of persons of Japanese origin during World War II, the Armenian genocide,  
42 and the World War II internment, relocation, and restriction of persons of Italian

1 origin, should be made in order that pupils will recognize these events for the  
2 horror they represented. The Legislature hereby encourages teachers to use these  
3 films and ~~videotapes~~ video recordings as a resource in teaching pupils about these  
4 three important historical events that are commonly overlooked in today's school  
5 curriculum.

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

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

11 SEC. \_\_\_\_\_. Section 52742 of the Education Code is amended to read:

12 52742. The films or video ~~tapes~~ recordings produced pursuant to this article  
13 shall be submitted to the Curriculum Development and Supplemental Materials  
14 Commission for its review, and may be made available to schools, as provided by  
15 this article, only upon adoption by the Curriculum Development and Supplemental  
16 Materials Commission.

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

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

22 SEC. \_\_\_\_\_. Section 52743 of the Education Code is amended to read:

23 52743. The State Department of Education shall make available the films or  
24 video ~~tapes~~ recordings produced pursuant to this article to schools.

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

26 SEC. \_\_\_\_\_. Section 56341.1 of the Education Code is amended to read:

27 56341.1. (a) When developing each pupil's individualized education program,  
28 the individualized education program team shall consider the following:

- 29 (1) The strengths of the pupil.
- 30 (2) The concerns of the parents or guardians for enhancing the education of the  
31 pupil.
- 32 (3) The results of the initial assessment or most recent assessment of the pupil.
- 33 (4) The academic, developmental, and functional needs of the child.

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

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

38 (2) In the case of a pupil with limited-English proficiency, consider the language  
39 needs of the pupil as those needs relate to the pupil's individualized education  
40 program.



1 (3) In the case of a pupil who is blind or visually impaired, provide for  
2 instruction in braille, and the use of braille, unless the individualized education  
3 program team determines, after an assessment of the pupil's reading and writing  
4 skills, needs, and appropriate reading and writing media, including an assessment  
5 of the pupil's future needs for instruction in braille or the use of braille, that  
6 instruction in braille or the use of braille is not appropriate for the pupil.

7 (4) Consider the communication needs of the pupil, and in the case of a pupil  
8 who is deaf or hard of hearing, consider the pupil's language and communication  
9 needs, opportunities for direct communications with peers and professional  
10 personnel in the pupil's language and communication mode, academic level, and  
11 full range of needs, including opportunities for direct instruction in the pupil's  
12 language and communication mode.

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

16 (c) If, in considering the special factors described in subdivisions (a) and (b), the  
17 individualized education program team determines that a pupil needs a particular  
18 device or service, including an intervention, accommodation, or other program  
19 modification, in order for the pupil to receive a free appropriate public education,  
20 the individualized education program team shall include a statement to that effect  
21 in the pupil's individualized education program.

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

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

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

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

32 (4) The pupil's anticipated needs.

33 (5) Any other relevant matter.

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

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

1 (g)(1) Notwithstanding Section 632 of the Penal Code, the parent or guardian, or  
2 local educational agency shall have the right to audio record ~~electronically~~ the  
3 proceedings of individualized education program team meetings ~~on an audiotape~~  
4 ~~recorder~~. The parent or guardian, or local educational agency shall notify the  
5 members of the individualized education program team of their intent to audio  
6 record a meeting at least 24 hours prior to the meeting. If the local educational  
7 agency initiates the notice of intent to ~~audiotape~~ audio record a meeting and the  
8 parent or guardian objects or refuses to attend the meeting because it will be ~~tape~~  
9 audio recorded, the meeting shall not be audio recorded ~~on an audiotape recorder~~.

10 (2) The Legislature hereby finds as follows:

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

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

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

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

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

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

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

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

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

36 SEC. \_\_\_\_\_. Section 60204 of the Education Code is amended to read:

37 60204. The commission shall:

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

39 (b) Develop criteria for evaluating instructional materials submitted for adoption  
40 so that the materials adopted shall adequately cover the subjects in the indicated  
41 grade or grades and which comply with the provisions of Article 3 (commencing  
42 with Section 60040) of Chapter 1. The criteria developed by the commission shall  
43 be consistent with the duties of the state board pursuant to Section 60200. The

1 criteria shall be public information and shall be provided in written or printed form  
2 to any person requesting such information.

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

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

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

9 (f) Recommend to the state board policies and activities to assist the department  
10 and school districts in the use of the curriculum framework and other available  
11 model curriculum materials for the purpose of guiding and strengthening the  
12 quality of instruction in the public schools.

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

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

18 SEC. \_\_\_\_\_. Section 94975 of the Education Code is amended to read:

19 94975. (a) This section establishes the procedure for notice and hearing required  
20 under this chapter and, except as provided in Section 94970, may be used in lieu  
21 of other notice or hearing requirements provided in this chapter.

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

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

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

27 (3) The right to a hearing and the time period within which the party subject to  
28 the notice may request a hearing in writing. The time period shall not be less than  
29 15 days after service of the notice unless a longer period is provided by statute.

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

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

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

1 (d)(1) Any party, including the bureau, may submit a written request to any  
2 other party before the hearing to obtain the names and addresses of any person  
3 who has personal knowledge, or who the party receiving the request claims to  
4 have personal knowledge, of any of the transactions, occurrences, violations, or  
5 other matters that are the basis of the administrative action. In addition, the  
6 requesting party shall have the right to inspect and copy any written statement  
7 made by that person and any writing, as defined by Section 250 of the Evidence  
8 Code, or thing that is in the custody, or under the control, of the party receiving  
9 the request and that is relevant and not privileged. This subdivision shall constitute  
10 the exclusive method for prehearing discovery. However, nothing in this  
11 paragraph shall affect the bureau's authority, at any time, to investigate, inspect,  
12 monitor, or obtain and copy information under any provision of this chapter.

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

20 (3) Except as provided in this paragraph, no party may introduce the testimony  
21 or statement of any person or any writing or thing into evidence at the hearing if  
22 that party failed to provide the name and address of the person or to produce the  
23 writing or thing for inspection and copying as provided by this subdivision. A  
24 party may introduce the testimony, statement, writing, or thing that was not  
25 identified or produced as required herein only if there is no objection or if the  
26 party establishes that the person, writing, or thing was unknown at the time when  
27 the response was made to the written request, the party could not have informed  
28 other parties within a reasonable time after learning of the existence of the person,  
29 writing, or thing, and no party would be prejudiced by the introduction of the  
30 evidence.

31 (e) Before the hearing has commenced, the bureau shall issue subpoenas at the  
32 written request of any party for the attendance of witnesses or the production of  
33 documents or other things in the custody or under the control of the person subject  
34 to the subpoena. Subpoenas issued pursuant to this section are subject to Section  
35 11510 of the Government Code.

36 (f)(1) The bureau shall designate an impartial hearing officer to conduct the  
37 hearing. The hearing officer may administer oaths and affirmations, regulate the  
38 course of the hearing, question witnesses, and otherwise investigate the issues,  
39 take official notice according to the procedure provided in Division 4  
40 (commencing with Section 450) of the Evidence Code of any technical or  
41 educational matter in the bureau's special field of expertise and of any matter that  
42 may be judicially noticed, set the time and place for continued hearings, fix the  
43 time for the filing of briefs and other documents, direct any party to appear and

1 confer to consider the simplification of issues by consent, and prepare a statement  
2 of decision.

3 (2) Neither a hearing officer nor any person who has a direct or indirect interest  
4 in the outcome of the hearing shall communicate directly or indirectly with each  
5 other regarding any issue involved in the hearing while the proceeding is pending  
6 without notice and opportunity for all parties to participate in the communication.  
7 A hearing officer who receives any ex parte communication shall immediately  
8 disclose the communication to the bureau and all other parties. The bureau may  
9 disqualify the hearing officer if necessary to eliminate the effect of the ex parte  
10 communication. If the bureau finds that any party willfully violated, or caused the  
11 violation of, this paragraph, the bureau shall enter that party's default and impose  
12 the administrative sanction set forth in the notice provided pursuant to subdivision  
13 (b).

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

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

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

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

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

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

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

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

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

3 (8) If a party fails to appear at a hearing, that party's default shall be taken and  
4 the party shall be deemed to have waived the hearing and agreed to the  
5 administrative action and the grounds for that action described in the notice given  
6 pursuant to subdivision (b). The bureau shall serve the party with an order of  
7 default including the administrative action ordered. The order shall be effective  
8 upon service or at any other time designated by the bureau. The bureau may  
9 relieve a party from an order of default if the party applies for relief within 15 days  
10 after the service of an order of default and establishes good cause for relief. An  
11 application for relief from default shall not stay the effective date of the order  
12 unless expressly provided by the bureau.

13 (h)(1) At any time before the matter is submitted for decision, the bureau may  
14 amend the notice provided pursuant to subdivision (b) to set forth any further  
15 grounds for the originally noticed administrative action or any additional  
16 administrative action and the grounds therefor. The statement of the further  
17 grounds for the originally noticed administrative action, or of the grounds for any  
18 additional administrative action, shall be made with sufficient particularity to give  
19 notice of the transactions, occurrences, violations, or other matters on which the  
20 action or additional action is based. The amended notice shall be served on all  
21 parties. All parties affected by the amended notice shall be given reasonable  
22 opportunity to respond to the amended notice as provided in this section.

23 (2) The bureau may amend the notice after the case is submitted for decision.  
24 The bureau shall serve each party with notice of the intended amendment, and  
25 shall provide the party with an opportunity to show that the party will be  
26 prejudiced by the amendment unless the case is reopened to permit the party to  
27 introduce additional evidence. If prejudice is shown, the bureau shall reopen the  
28 case to permit the introduction of additional evidence.

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

36 (2) The director shall make the final decision which shall be based exclusively  
37 on evidence introduced at the hearing. The final decision shall be supported by  
38 substantial evidence in the record. The director also shall issue a statement of  
39 decision explaining the factual and legal basis for the final decision as to each of  
40 the grounds for the administrative action set forth in the notice or amended notice.  
41 The director shall issue an order based on its decision which shall be effective  
42 upon service or at any other time designated by the director. The director, or his or

1 her agent, shall serve a copy of the final decision and order, within 10 days of their  
2 issuance, on each party and its counsel.

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

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

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

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

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

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

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

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

ELECTION CODE

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

SEC. \_\_\_\_\_. Section 2052 of the Election Code is amended to read:

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

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

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

SEC. \_\_\_\_\_. Section 2053 of the Election Code is amended to read:

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

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

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

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

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

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

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

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

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

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



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

2 SEC. \_\_\_\_\_. Section 9082.5 of the Election Code is amended to read:

3 9082.5. The Secretary of State shall cause to be produced an ~~audiocassette~~ audio  
4 recorded version of the state ballot pamphlet. This audio recorded ~~cassette~~ version  
5 shall be made available in quantities to be determined by the Secretary of State  
6 and shall contain an impartial summary, arguments for and against, rebuttal  
7 arguments, and other information concerning each measure that the Secretary of  
8 State determines will make the ~~cassette~~ audio recorded version of the state ballot  
9 pamphlet easier to understand or more useful to the average voter.

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

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

15 SEC. \_\_\_\_\_. Section 18541 of the Election Code is amended to read:

16 18541. (a) No person shall, with the intent of dissuading another person from  
17 voting, within 100 feet of a polling place, do any of the following:

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

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

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

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

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

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

32 EVIDENCE CODE

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

34 SEC. \_\_\_\_\_. Section 795 of the Evidence Code is amended to read:

35 795. (a) The testimony of a witness is not inadmissible in a criminal proceeding  
36 by reason of the fact that the witness has previously undergone hypnosis for the  
37 purpose of recalling events which are the subject of the witness’ testimony, if all  
38 of the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

31 SEC. \_\_\_\_\_. Section 1118 of the Evidence Code is amended to read:

32 1118. An oral agreement "in accordance with Section 1118" means an oral  
33 agreement that satisfies all of the following conditions:

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

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

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

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

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

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

6 SEC. \_\_\_\_\_. Section 1294 of the Evidence Code is amended to read:

7 1294. (a) The following evidence of prior inconsistent statements of a witness  
8 properly admitted in a preliminary hearing or trial of the same criminal matter  
9 pursuant to Section 1235 is not made inadmissible by the hearsay rule if the  
10 witness is unavailable and former testimony of the witness is admitted pursuant to  
11 Section 1291:

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

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

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

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

24 **FAMILY CODE**

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

26 SEC. \_\_\_\_\_. Section 3170 of the Family Code is amended to read:

27 3170. (a) If it appears on the face of a petition, application, or other pleading to  
28 obtain or modify a temporary or permanent custody or visitation order that  
29 custody, visitation, or both are contested, the court shall set the contested issues  
30 for mediation.

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

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

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

2 SEC. \_\_\_\_\_. Section 7572 of the Family Code is amended to read:

3 7572. (a) The Department of Child Support Services, in consultation with the  
4 State Department of Health Services, the California Association of Hospitals and  
5 Health Systems, and other affected health provider organizations, shall work  
6 cooperatively to develop written materials to assist providers and parents in  
7 complying with this chapter. This written material shall be updated periodically by  
8 the Department of Child Support Services to reflect changes in law, procedures, or  
9 public need.

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

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

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

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

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

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

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

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

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

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

42 SEC. \_\_\_\_\_. Section 10005 of the Family Code is amended to read:

1 10005. (a) By local rule, the superior court may designate additional duties of  
2 the family law facilitator, which may include, but are not limited to, the following:

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

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

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

12 (4) Assisting the clerk in maintaining records.

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

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

17 (7) Providing the services specified in Division 15 (commencing with Section  
18 10100). Except for the funding specifically designated for visitation programs  
19 pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child  
20 support funds shall not be used to fund the services specified in Division 15  
21 (commencing with Section 10100).

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

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

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

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

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

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

2 SEC. \_\_\_\_\_. Section 20034 of the Family Code is amended to read:

3 20034. (a) An attorney, known as an Attorney-Mediator, shall be hired to assist  
4 the court in resolving child and spousal support disputes, to develop community  
5 outreach programs, and to undertake other duties as assigned by the court.

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

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

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

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

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

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

21 (5) Assisting the clerk in maintaining records.

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

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

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

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

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

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

GOVERNMENT CODE

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

SEC. \_\_\_\_\_. Section 8888.30 of the Government Code is amended to read:

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

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

(b) If a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, the drawings shall always be open to the public. No manual or physical selection in the drawings shall be conducted by any employee of the Lottery. Except for computer automated drawings, drawings shall be witnessed by an independent lottery contractor having qualifications established by the Commission. Any equipment used in the drawings shall be inspected by the independent lottery contractor and an employee of the Lottery both before and after the drawings. The drawings and the inspections shall be both audio and video recorded ~~on both videotape and audiotape~~.

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

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

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

SEC. \_\_\_\_\_. Section 11124.1 of the Government Code is amended to read:

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

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

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

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

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

10 SEC. \_\_\_\_\_. Section 11130 of the Government Code is amended to read:

11 11130. (a) The Attorney General, the district attorney, or any interested person  
12 may commence an action by mandamus, injunction, or declaratory relief for the  
13 purpose of stopping or preventing violations or threatened violations of this article  
14 or to determine the applicability of this article to past actions or threatened future  
15 action by members of the state body or to determine whether any rule or action by  
16 the state body to penalize or otherwise discourage the expression of one or more of  
17 its members is valid or invalid under the laws of this state or of the United States,  
18 or to compel the state body to ~~tape~~ audio record its closed sessions as hereinafter  
19 provided.

20 (b) The court in its discretion may, upon a judgment of a violation of Section  
21 11126, order the state body to ~~tape~~ audio record its closed sessions and preserve  
22 the ~~tape~~ audio recordings for the period and under the terms of security and  
23 confidentiality the court deems appropriate.

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

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

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

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

39 (i) Identification of the proceeding in which discovery or disclosure is sought,  
40 the party seeking discovery or disclosure, the date and time of the meeting  
41 recorded, and the governmental agency that has custody and control of the  
42 recording.



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

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

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

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

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

17 **Note.** This section authorizes a court to order a state body to tape record closed sessions of its  
18 meetings, and preserve the recordings for potential future disclosure, following a judgment that  
19 the body has violated Section 11126 (governing conducting of closed sessions of public  
20 meetings). The Commission invites comment from the Attorney General and other interested  
21 persons on whether allowing this recording by means of technology that does not use tape would  
22 cause any problems relating to preservation of the recording.

23 **Gov’t Code § 12811.3 (amended). Employee transfer**

24 SEC. \_\_\_\_\_. Section 12811.3 of the Government Code is amended to read:

25 12811.3. (a) Notwithstanding any other provision of law and subject to the  
26 provisions of subdivision (i), any employee of a department, board, or commission  
27 under the jurisdiction of the Youth and Adult Correctional Agency, who is  
28 designated as a peace officer described in Chapter 4.5 (commencing with Section  
29 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current  
30 position to another department, board, or commission under the jurisdiction of the  
31 Youth and Adult Correctional Agency.

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

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

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

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

13 (e) Any peace officer who has successfully completed a course of training  
14 pursuant to Section 13602 of the Penal Code and who transfers to another  
15 department, board, or commission pursuant to subdivision (a) shall not be required  
16 to complete a new course of training pursuant to Section 13602 of the Penal Code.  
17 However, each department, board, or commission may prescribe additional  
18 training to be provided to an employee who transfers pursuant to subdivision (a)  
19 and shall provide that training within the first six months of appointment to his or  
20 her new peace officer position.

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

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

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

32 (i) This section shall become operative only when the Secretary of the Youth  
33 and Adult Correctional Agency certifies in writing that it is necessary to prevent or  
34 minimize employment actions, including, but not limited to, layoffs, demotions,  
35 reductions in time base, or involuntary transfers of employees. In addition, the  
36 Secretary of the Youth and Adult Correctional Agency shall have the sole  
37 authority to designate any or all departments, boards, or commissions eligible to  
38 have its peace officer employees transfer pursuant to subdivision (a) and any or all  
39 departments, boards, or commissions that shall accept peace officer employees  
40 under this section.

41 **Comment.** Section 12811.3 is amended to reflect advances in recording technology and for  
42 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

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

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

4 SEC. \_\_\_\_\_. Section 14999.31 of the Government Code is amended to read:

5 14999.31. The Film Office and its director shall encourage the use of the  
6 uniform application form described in Section 14999.32 for obtaining a local  
7 permit to engage in film production within the jurisdiction of a county, city, or city  
8 and county. As used in this chapter “film” includes, but is not limited to, feature  
9 motion pictures, ~~videotapes~~ video recordings, television motion pictures,  
10 commercials, and stills. “Production” means the activity of making a film for  
11 commercial or noncommercial purposes on property owned by a county, city, or  
12 city and county or on private property within the jurisdiction of a county, city, or  
13 city and county.

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

18 **Gov’t Code § 26202.6 (amended). Recordings of video monitoring and telephone and radio**  
19 **communications**

20 SEC. \_\_\_\_\_. Section 26202.6 of the Government Code is amended to read:

21 26202.6. (a) Notwithstanding the provisions of Sections 26202, 26205, and  
22 26205.1, the head of a department of a county, after one year, may destroy  
23 recordings of routine video monitoring, and after 100 days may destroy recordings  
24 of telephone and radio communications maintained by the department. This  
25 destruction shall be approved by the legislative body and the written consent of the  
26 agency attorney shall be obtained. In the event that the recordings are evidence in  
27 any claim filed or any pending litigation, they shall be preserved until pending  
28 litigation is resolved.

29 (b) For purposes of this section, “recordings of telephone and radio  
30 communications” means the routine daily ~~taping and~~ recording of telephone  
31 communications to and from a county and all radio communications relating to the  
32 operations of the departments.

33 (c) For purposes of this section, “routine video monitoring” means ~~videotaping~~  
34 video recording by a video or electronic imaging system designed to record the  
35 regular and ongoing operations of the departments described in subdivision (a),  
36 including mobile in-car video systems, jail observation and monitoring systems,  
37 and building security ~~taping~~ recording systems.

38 (d) For purposes of this section, “department” includes a public safety  
39 communications center operated by the county and the governing board of any  
40 special district whose membership is the same as the membership of the board of  
41 supervisors.

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

5 **Gov’t Code § 26206.7 (amended). Destruction of duplicates of county records**

6 SEC. \_\_\_\_\_. Section 26206.7 of the Government Code is amended to read:

7 26206.7. Notwithstanding the provisions of Section 26202, the legislative body  
8 of a county may prescribe a procedure whereby duplicates of county records less  
9 than two years old may be destroyed if they are no longer required.

10 For purposes of this section, video recording media, ~~such as videotapes and~~  
11 ~~films, and~~ including recordings of “routine video monitoring” pursuant to Section  
12 26202.6, shall be considered duplicate records if the county keeps another record,  
13 such as written minutes or an ~~audiotape~~ audio recording, of the event that is  
14 recorded in the video medium. However, a video recording medium shall not be  
15 destroyed or erased pursuant to this section for a period of at least 90 days after  
16 occurrence of the event recorded thereon.

17 **Comment.** Section 26206.7 is amended to reflect advances in recording technology and for  
18 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
19 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
20 “audio recording,” or “audio record,” as context required).

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

22 SEC. \_\_\_\_\_. Section 26206.8 of the Government Code is amended to read:

23 26206.8. (a) When installing new security systems, a transit agency operated by  
24 a county shall only purchase and install equipment capable of storing recorded  
25 images for at least one year, unless all of the following conditions apply:

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

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

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

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

37 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any  
38 claim filed or any pending litigation, in which case the ~~videotapes or~~ video  
39 recordings or other recordings shall be preserved until the claim or the pending  
40 litigation is resolved.

41 (2) The ~~videotapes or~~ video recordings or other recordings recorded an event  
42 that was or is the subject of an incident report, in which case the ~~videotapes or~~

1 video recordings or other recordings shall be preserved until the incident is  
2 resolved.

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

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

11 **Gov’t Code § 27491.47 (amended). Removal of corneal eye tissue**

12 SEC. \_\_\_\_\_. Section 27491.47 of the Government Code is amended to read:

13 27491.47. (a) Notwithstanding any other provision of law, the coroner may, in  
14 the course of an autopsy, remove and release or authorize the removal and release  
15 of corneal eye tissue from a body within the coroner’s custody, if all of the  
16 following conditions are met:

17 (1) The autopsy has otherwise been authorized.

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

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

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

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

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

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

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

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

3 (b) Neither the coroner nor medical examiner authorizing the removal of the  
4 corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or  
5 person acting upon the request, order, or direction of the coroner or medical  
6 examiner in the removal of corneal tissue pursuant to this section, shall incur civil  
7 liability for the removal in an action brought by any person who did not object  
8 prior to the removal of the corneal tissue, nor be subject to criminal prosecution  
9 for the removal of the corneal tissue pursuant to the provisions of this section.

10 (c) This section may not be construed to interfere with the ability of a person to  
11 make an anatomical gift pursuant to the Uniform Anatomical Gift Act (Chapter  
12 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and  
13 Safety Code).

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

18 **Gov’t Code § 34090.6 (amended). Destruction by department of recordings of routine video**  
19 **monitoring and telephone and radio communications**

20 SEC. \_\_\_\_\_. Section 34090.6 of the Government Code is amended to read:

21 34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a  
22 department of a city or city and county, after one year, may destroy recordings of  
23 routine video monitoring, and after 100 days may destroy recordings of telephone  
24 and radio communications maintained by the department. This destruction shall be  
25 approved by the legislative body and the written consent of the agency attorney  
26 shall be obtained. In the event that the recordings are evidence in any claim filed  
27 or any pending litigation, they shall be preserved until pending litigation is  
28 resolved.

29 (b) For purposes of this section, “recordings of telephone and radio  
30 communications” means the routine daily ~~taping~~ and recording of telephone  
31 communications to and from a city, city and county, or department, and all radio  
32 communications relating to the operations of the departments.

33 (c) For purposes of this section, “routine video monitoring” means ~~videotaping~~  
34 video recording by a video or electronic imaging system designed to record the  
35 regular and ongoing operations of the departments described in subdivision (a),  
36 including mobile in-car video systems, jail observation and monitoring systems,  
37 and building security taping systems.

38 (d) For purposes of this section, “department” includes a public safety  
39 communications center operated by the city or city and county.

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

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

3 SEC. \_\_\_\_\_. Section 34090.7 of the Family Code is amended to read:

4 34090.7. Notwithstanding the provisions of Section 34090, the legislative body  
5 of a city may prescribe a procedure whereby duplicates of city records less than  
6 two years old may be destroyed if they are no longer required.

7 For purposes of this section, video recording media, ~~such as videotapes and~~  
8 ~~films, and~~ including recordings of "routine video monitoring" pursuant to Section  
9 34090.6, shall be considered duplicate records if the city keeps another record,  
10 such as written minutes or an ~~audiotape~~ audio recording, of the event that is  
11 recorded in the video medium. However, a video recording medium shall not be  
12 destroyed or erased pursuant to this section for a period of at least 90 days after  
13 occurrence of the event recorded thereon.

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

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

19 SEC. \_\_\_\_\_. Section 34090.8 of the Government Code is amended to read:

20 34090.8. (a) When installing new security systems, a transit agency operated by  
21 a city or city and county shall only purchase and install equipment capable of  
22 storing recorded images for at least one year, unless all of the following conditions  
23 apply:

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

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

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

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

35 (1) The ~~videotapes or~~ video recordings or other recordings are evidence in any  
36 claim filed or any pending litigation, in which case the ~~videotapes or video~~  
37 recordings or other recordings shall be preserved until the claim or the pending  
38 litigation is resolved.

39 (2) The ~~videotapes or video recordings or other~~ recordings recorded an event  
40 that was or is the subject of an incident report, in which case the ~~videotapes or~~  
41 video recordings or other recordings shall be preserved until the incident is  
42 resolved.

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

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

9 **Gov’t Code § 50028 (amended). Coin-operated viewing machines**

10 SEC. \_\_\_\_\_. Section 50028 of the Government Code is amended to read:

11 50028. (a) The legislative body of any county, city, or city and county, whether  
12 general law or chartered, may adopt, by ordinance, such rules and regulations as it  
13 deems necessary, which require any coin-operated viewing machine to have  
14 permanently attached thereto a tally counter which will count each coin, and  
15 accumulate such count or the accumulated amount of money, deposited in such  
16 coin-operated viewing machine. Such tally counter shall be resistant to tampering,  
17 and shall not be capable of being reset to a lower number, and shall display the  
18 count in such a manner that the accumulated total is readily visible near the coin  
19 insertion slot or opening. For the purposes of this section, “coin-operated viewing  
20 machine” means any projector, machine, television, or other device which displays  
21 for viewing motion pictures, projection slides, filmstrips, photographic pictures,  
22 video ~~tapes~~ recordings, or drawings, and which is operated by the viewer, or for  
23 the viewer, by means of inserting a coin into the device, an attachment thereto, an  
24 enclosure surrounding such device, or any other device electrically or  
25 mechanically connected thereto. For the purposes of this section, “coin” means  
26 any physical object, including, but not limited to, a piece of metal issued by the  
27 federal government as money. “Coin-operated viewing machine” does not include  
28 an electronic video game of skill wherein the image is created, generated, or  
29 synthesized electronically, or coin-operated television receivers which display  
30 commercial or public service broadcasts.

31 (b) Notwithstanding any other provision of law, any county ordinance adopted  
32 pursuant to this section shall be enforceable within the incorporated, as well as the  
33 unincorporated, area of the county, whether general law or chartered, unless a city  
34 ordinance in direct conflict with such county ordinance has been adopted, in which  
35 case such county ordinance shall be enforceable in the area of the county outside  
36 of such city.

37 (c)(1) Any person who violates the provisions of the ordinance adopted pursuant  
38 to this section shall be subject to a civil penalty not to exceed ten thousand dollars  
39 (\$10,000) for each such machine and each day in which such violation occurs.

40 (2) In determining the amount of such penalty, the court shall take into  
41 consideration all relevant circumstances, including but not limited to, the  
42 frequency of inspection, the cash flow through such machine, the amount of



1 revenue derived by other such machines in the vicinity, prior revenues generated,  
2 the nature and persistence of the violation, and prior violations by the same person  
3 or establishment.

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

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

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

17 **Gov’t Code § 53160 (amended). Destruction of recordings of routine video monitoring and**  
18 **telephone and radio communications**

19 SEC. \_\_\_\_\_. Section 53160 of the Government Code is amended to read:

20 53160. (a) The head of a special district, after one year, may destroy recordings  
21 of routine video monitoring, and after 100 days may destroy recordings of  
22 telephone and radio communications maintained by the special district. This  
23 destruction shall be approved by the legislative body and the written consent of the  
24 agency attorney shall be obtained. In the event that the recordings are evidence in  
25 any claim filed or any pending litigation, they shall be preserved until pending  
26 litigation is resolved.

27 (b) For purposes of this article, “recordings of telephone and radio  
28 communications” means the routine daily taping and recording of telephone  
29 communications to and from a special district, and all radio communications  
30 relating to the operations of the special district.

31 (c) For purposes of this article, “routine video monitoring” means ~~videotaping~~  
32 video recording by a video or electronic imaging system designed to record the  
33 regular and ongoing operations of the special district, including mobile in-car  
34 video systems, jail observation and monitoring systems, and building security  
35 taping systems.

36 (d) For purposes of this article, “special district” shall have the same meaning as  
37 “public agency,” as that term is defined in Section 53050.

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

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

3 SEC. \_\_\_\_\_. Section 53161 of the Government Code is amended to read:

4 53161. Notwithstanding Section 53160, the legislative body of a special district  
5 may prescribe a procedure whereby duplicates of special district records less than  
6 two years old may be destroyed if they are no longer required.

7 For purposes of this section, video recording media, ~~such as videotapes and~~  
8 ~~films, and~~ including recordings of "routine video monitoring" pursuant to Section  
9 53160, shall be considered duplicate records if the special district keeps another  
10 record, such as written minutes or an ~~audiotape~~ audio recording, of the event that  
11 is recorded in the video medium. However, a video recording medium shall not be  
12 destroyed or erased pursuant to this section for at least 90 days after occurrence of  
13 the event recorded thereon.

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

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

19 SEC. \_\_\_\_\_. Section 53162 of the Government Code is amended to read:

20 53162. (a) When installing new security systems, a transit agency operated by a  
21 special district shall only purchase and install equipment capable of storing  
22 recorded images for at least one year, unless all of the following conditions apply:

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

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

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

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

34 (1) The ~~videotapes or video recordings~~ or other recordings are evidence in any  
35 claim filed or any pending litigation, in which case the ~~videotapes or video~~  
36 recordings or other recordings shall be preserved until the claim or the pending  
37 litigation is resolved.

38 (2) The ~~videotapes or video recordings or other~~ recordings recorded an event  
39 that was or is the subject of an incident report, in which case the ~~videotapes or~~  
40 video recordings or other recordings shall be preserved until the incident is  
41 resolved.

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

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

9 **Gov’t Code § 54953.5 (amended). Recording of public meeting**

10 SEC. \_\_\_\_\_. Section 54953.5 of the Government Code is amended to read:

11 54953.5. (a) Any person attending an open and public meeting of a legislative  
12 body of a local agency shall have the right to record the proceedings with an audio  
13 or video ~~tape~~ recorder or a still or motion picture camera in the absence of a  
14 reasonable finding by the legislative body of the local agency that the recording  
15 cannot continue without noise, illumination, or obstruction of view that  
16 constitutes, or would constitute, a persistent disruption of the proceedings.

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

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

29 **Gov’t Code § 54960 (amended). Action to stop or prevent violation of meeting provision**

30 SEC. \_\_\_\_\_. Section 54960 of the Government Code is amended to read:

31 54960. (a) The district attorney or any interested person may commence an  
32 action by mandamus, injunction or declaratory relief for the purpose of stopping or  
33 preventing violations or threatened violations of this chapter by members of the  
34 legislative body of a local agency or to determine the applicability of this chapter  
35 to actions or threatened future action of the legislative body, or to determine  
36 whether any rule or action by the legislative body to penalize or otherwise  
37 discourage the expression of one or more of its members is valid or invalid under  
38 the laws of this state or of the United States, or to compel the legislative body to  
39 ~~tape~~ audio record its closed sessions as hereinafter provided.

40 (b) The court in its discretion may, upon a judgment of a violation of Section  
41 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative  
42 body to ~~tape~~ audio record its closed sessions and preserve the ~~tape~~ audio

1 recordings for the period and under the terms of security and confidentiality the  
2 court deems appropriate.

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

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

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

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

18 (i) Identification of the proceeding in which discovery or disclosure is sought,  
19 the party seeking discovery or disclosure, the date and time of the meeting  
20 recorded, and the governmental agency which has custody and control of the  
21 recording.

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

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

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

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

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

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

1 **Gov't Code § 68151 (amended). Definitions**

2 SEC. \_\_\_\_\_. Section 68151 of the Government Code is amended to read:

3 68151. The following definitions apply to this chapter:

4 (a) "Court record" shall consist of the following:

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

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

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

13 (b) "Notice of destruction and no transfer" means that the clerk has given notice  
14 of destruction of the superior court records open to public inspection, and that  
15 there is no request and order for transfer of the records as provided in the  
16 California Rules of Court.

17 (c) "Final disposition of the case" means that an acquittal, dismissal, or order of  
18 judgment has been entered in the case or proceeding, the judgment has become  
19 final, and no postjudgment motions or appeals are pending in the case or for the  
20 reviewing court upon the mailing of notice of the issuance of the remittitur.

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

27 (d) "Retain permanently" means that the original court records shall never be  
28 transferred or destroyed.

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

33 **HEALTH AND SAFETY CODE**

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

35 SEC. \_\_\_\_\_. Section 1569.69 of the Health and Safety Code is amended to read:

36 1569.69. (a) Each residential care facility for the elderly licensed under this  
37 chapter shall ensure that each employee of the facility who assists residents with  
38 the self-administration of medications meets the following training requirements:

39 (1) In facilities licensed to provide care for 16 or more persons, the employee  
40 shall complete 16 hours of initial training. This training shall consist of eight hours  
41 of hands-on shadowing training, which shall be completed prior to assisting with

1 the self-administration of medications, and eight hours of other training or  
2 instruction, as described in subdivision (f), which shall be completed within the  
3 first two weeks of employment.

4 (2) In facilities licensed to provide care for 15 or fewer persons, the employee  
5 shall complete six hours of initial training. This training shall consist of two hours  
6 of hands-on shadowing training, which shall be completed prior to assisting with  
7 the self-administration of medications, and four hours of other training or  
8 instruction, as described in subdivision (f), which shall be completed within the  
9 first two weeks of employment.

10 (3) An employee shall be required to complete the training requirements for  
11 hands-on shadowing training described in this subdivision prior to assisting any  
12 resident in the self-administration of medications. The training and instruction  
13 described in this subdivision shall be completed, in their entirety, within the first  
14 two weeks of employment.

15 (4) The training shall cover all of the following areas:

16 (A) The role, responsibilities, and limitations of staff who assist residents with  
17 the self-administration of medication, including tasks limited to licensed medical  
18 professionals.

19 (B) An explanation of the terminology specific to medication assistance.

20 (C) An explanation of the different types of medication orders: prescription,  
21 over-the-counter, controlled, and other medications.

22 (D) An explanation of the basic rules and precautions of medication assistance.

23 (E) Information on medication forms and routes for medication taken by  
24 residents.

25 (F) A description of procedures for providing assistance with the self-  
26 administration of medications in and out of the facility, and information on the  
27 medication documentation system used in the facility.

28 (G) An explanation of guidelines for the proper storage, security, and  
29 documentation of centrally stored medications.

30 (H) A description of the processes used for medication ordering, refills and the  
31 receipt of medications from the pharmacy.

32 (I) An explanation of medication side effects, adverse reactions, and errors.

33 (5) To complete the training requirements set forth in this subdivision, each  
34 employee shall pass an examination that tests the employee's comprehension of,  
35 and competency in, the subjects listed in paragraph (3).

36 (6) Residential care facilities for the elderly shall encourage pharmacists and  
37 licensed medical professionals to use plain English when preparing labels on  
38 medications supplied to residents. As used in this section, "plain English" means  
39 that no abbreviations, symbols, or Latin medical terms shall be used in the  
40 instructions for the self-administration of medication.

41 (7) The training requirements of this section are not intended to replace or  
42 supplant those required of all staff members who assist residents with personal  
43 activities of daily living as set forth in Section 1569.625.

1 (8) The training requirements of this section shall be repeated if either of the  
2 following occur:

3 (A) An employee returns to work for the same licensee after a break of service  
4 of more than 180 consecutive calendar days.

5 (B) An employee goes to work for another licensee in a facility in which he or  
6 she assists residents with the self-administration of medication.

7 (b) Each employee who received training and passed the exam required in  
8 paragraph (5) of subdivision (a), and who continues to assist with the self-  
9 administration of medicines, shall also complete four hours of in-service training  
10 on medication-related issues in each succeeding 12-month period.

11 (c) The requirements set forth in subdivisions (a) and (b) do not apply to persons  
12 who are licensed medical professionals.

13 (d) Each residential care facility for the elderly that provides employee training  
14 under this section shall use the training material and the accompanying  
15 examination that are developed by, or in consultation with, a licensed nurse,  
16 pharmacist, or physician. The licensed residential care facility for the elderly shall  
17 maintain the following documentation for each medical consultant used to develop  
18 the training:

19 (1) The name, address, and telephone number of the consultant.

20 (2) The date when consultation was provided.

21 (3) The consultant's organization affiliation, if any, and any educational and  
22 professional qualifications specific to medication management.

23 (4) The training topics for which consultation was provided.

24 (e) Each person who provides employee training under this section shall meet  
25 the following education and experience requirements:

26 (1) A minimum of five hours of initial, or certified continuing, education or  
27 three semester units, or the equivalent, from an accredited educational institution,  
28 on topics relevant to medication management.

29 (2) The person shall meet any of the following practical experience or licensure  
30 requirements:

31 (A) Two years full-time experience, within the last four years, as a consultant  
32 with expertise in medication management in areas covered by the training  
33 described ~~is~~ in subdivision (a).

34 (B) Two years full-time experience, or the equivalent, within the last four years,  
35 as an administrator for a residential care facility for the elderly, during which time  
36 the individual has acted in substantial compliance with applicable regulations.

37 (C) Two years full-time experience, or the equivalent, within the last four years,  
38 as a direct care provider assisting with the self-administration of medications for a  
39 residential care facility for the elderly, during which time the individual has acted  
40 in substantial compliance with applicable regulations.

41 (D) Possession of a license as a medical professional.

1 (3) The licensed residential care facility for the elderly shall maintain the  
2 following documentation on each person who provides employee training under  
3 this section:

4 (A) The person's name, address, and telephone number.

5 (B) Information on the topics or subject matter covered in the training.

6 (C) The time, dates, and hours of training provided.

7 (f) Other training or instruction, as required in paragraphs (1) and (2) of  
8 subdivision (a), may be provided off site, and may use various methods of  
9 instruction, including, but not limited to, all of the following:

10 (1) Lectures by presenters who are knowledgeable about medication  
11 management.

12 (2) ~~Video instruction tapes~~ Recorded video instruction, interactive material,  
13 online training, and books.

14 (3) Other written or visual materials approved by organizations or individuals  
15 with expertise in medication management.

16 (g) Residential care facilities for the elderly licensed to provide care for 16 or  
17 more persons shall maintain documentation that demonstrates that a consultant  
18 pharmacist or nurse has reviewed the facility's medication management program  
19 and procedures at least twice a year.

20 (h) Nothing in this section authorizes unlicensed personnel to directly administer  
21 medications.

22 (i) This section shall become operative on January 1, 2008.

23 **Comment.** Subdivision (e)(2) of Section 1569.69 is amended to correct a typographical error.

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

28 **Health & Safety Code § 1736.5 (amended). Grounds for denial of application or certificate**

29 SEC. \_\_\_\_\_. Section 1736.5 of the Health and Safety Code is amended to read:

30 1736.5. (a) The state department shall deny a training application and deny,  
31 suspend, or revoke a certificate issued under this article if the applicant or  
32 certificate holder has been convicted of a violation or attempted violation of any of  
33 the following Penal Code provisions: Section 187, subdivision (a) of Section 192,  
34 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262,  
35 or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,  
36 subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d),  
37 (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475,  
38 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or  
39 666, unless any of the following apply:

40 (1) The person was convicted of a felony and has obtained a certificate of  
41 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
42 the Penal Code and the information or accusation against him or her has been  
43 dismissed pursuant to Section 1203.4 of the Penal Code.



1 (2) The person was convicted of a misdemeanor and the information or  
2 accusation against him or her has been dismissed pursuant to Section 1203.4 or  
3 1203.4a of the Penal Code.

4 (3) The certificate holder was convicted of a felony or a misdemeanor, but has  
5 previously disclosed the fact of each conviction to the department, and the  
6 department has made a determination in accordance with law that the conviction  
7 does not disqualify the applicant from certification.

8 (b) An application or certificate shall be denied, suspended, or revoked upon  
9 conviction in another state of an offense that, if committed or attempted in this  
10 state, would have been punishable as one or more of the offenses set forth in  
11 subdivision (a), unless evidence of rehabilitation comparable to the certificate of  
12 rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of  
13 subdivision (a) is provided.

14 (c)(1) The state department may deny an application or deny, suspend, or revoke  
15 a certificate issued under this article for any of the following:

16 (A) Unprofessional conduct, including, but not limited to, incompetence, gross  
17 negligence, physical, mental, or verbal abuse of patients, or misappropriation of  
18 property of patients or others.

19 (B) Conviction of a crime substantially related to the qualifications, functions,  
20 and duties of a home health aide, irrespective of a subsequent order under Section  
21 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department  
22 determines that the applicant or certificate holder has not adequately demonstrated  
23 that he or she has been rehabilitated and will present a threat to the health, safety,  
24 or welfare of patients.

25 (C) Conviction for, or use of, any controlled substance as defined in Division 10  
26 (commencing with Section 11000), or any dangerous drug, as defined in Section  
27 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or  
28 in a manner dangerous or injurious to the home health aide, any other person, or  
29 the public, to the extent that this use would impair the ability to conduct, with  
30 safety to the public, the practice authorized by a certificate.

31 (D) Procuring a home health aide certificate by fraud, misrepresentation, or  
32 mistake.

33 (E) Making or giving any false statement or information in conjunction with the  
34 application for issuance of a home health aide certificate or training and  
35 examination application.

36 (F) Impersonating any applicant, or acting as proxy for an applicant, in any  
37 examination required under this article for the issuance of a certificate.

38 (G) Impersonating another home health aide, a licensed vocational nurse, or a  
39 registered nurse, or permitting or allowing another person to use a certificate for  
40 the purpose of providing nursing services.

41 (H) Violating or attempting to violate, directly or indirectly, or assisting in or  
42 abetting the violation of, or conspiring to violate any provision or term of, this  
43 article.

1 (2) In determining whether or not to deny an application or deny, suspend, or  
2 revoke a certificate issued under this article pursuant to this subdivision, the  
3 department shall take into consideration the following factors as evidence of good  
4 character and rehabilitation:

5 (A) The nature and seriousness of the offense under consideration and its  
6 relationship to their employment duties and responsibilities.

7 (B) Activities since conviction, including employment or participation in  
8 therapy or education, that would indicate changed behavior.

9 (C) The time that has elapsed since the commission of the conduct or offense  
10 referred to in subparagraph (A) or (B) and the number of offenses.

11 (D) The extent to which the person has complied with any terms of parole,  
12 probation, restitution, or any other sanction lawfully imposed against the person.

13 (E) Any rehabilitation evidence, including character references, submitted by the  
14 person.

15 (F) Employment history and current employer recommendations.

16 (G) Circumstances surrounding the commission of the offense that would  
17 demonstrate the unlikelihood of repetition.

18 (H) Granting by the Governor of a full and unconditional pardon.

19 (I) A certificate of rehabilitation from a superior court.

20 (d) When the state department determines that a certificate shall be suspended,  
21 the state department shall specify the period of actual suspension. The state  
22 department may determine that the suspension shall be stayed, placing the  
23 certificate holder on probation with specified conditions for a period not to exceed  
24 two years. When the state department determines that probation is the appropriate  
25 action, the certificate holder shall be notified that in lieu of the state department  
26 proceeding with a formal action to suspend the certification and in lieu of an  
27 appeal pursuant to subdivision (g), the certificate holder may request to enter into  
28 a diversion program agreement. A diversion program agreement shall specify  
29 terms and conditions related to matters, including, but not limited to, work  
30 performance, rehabilitation, training, counseling, progress reports, and treatment  
31 programs. If a certificate holder successfully completes a diversion program, no  
32 action shall be taken upon the allegations that were the basis for the diversion  
33 agreement. Upon failure of the certificate holder to comply with the terms and  
34 conditions of an agreement, the state department may proceed with a formal action  
35 to suspend or revoke the certification.

36 (e) A plea or verdict of guilty, or a conviction following a plea of nolo  
37 contendere, shall be deemed a conviction within the meaning of this article. The  
38 state department may deny an application or deny, suspend, or revoke a  
39 certification based on a conviction as provided in this article when the judgment of  
40 conviction is entered or when an order granting probation is made suspending the  
41 imposition of sentence.

1 (f) Upon determination to deny an application or deny, revoke, or suspend a  
2 certificate, the state department shall notify the applicant or certificate holder in  
3 writing by certified mail of all of the following:

4 (1) The reasons for the determination.

5 (2) The applicant's or certificate holder's right to appeal the determination if the  
6 determination was made under subdivision (c).

7 (g)(1) Upon written notification that the state department has determined that an  
8 application shall be denied or a certificate shall be denied, suspended, or revoked  
9 under subdivision (c), the applicant or certificate holder may request an  
10 administrative hearing by submitting a written request to the state department  
11 within 20 business days of receipt of the written notification. Upon receipt of a  
12 written request, the state department shall hold an administrative hearing pursuant  
13 to the procedures specified in Section 100171, except where those procedures are  
14 inconsistent with this section.

15 (2) A hearing under this section shall be conducted by a hearing officer or  
16 administrative law judge designated by the director at a location other than the  
17 work facility convenient to the applicant or certificate holder. The hearing shall be  
18 ~~tape~~ audio or video recorded and a written decision shall be sent by certified mail  
19 to the applicant or certificate holder within 30 calendar days of the hearing. Except  
20 as specified in subdivision (h), the effective date of an action to revoke or suspend  
21 a certificate shall be specified in the written decision, or if no administrative  
22 hearing is timely requested, the effective date shall be 21 business days from  
23 written notification of the department's determination to revoke or suspend.

24 (h) The state department may revoke or suspend a certificate prior to any  
25 hearing when immediate action is necessary in the judgment of the director to  
26 protect the public welfare. Notice of this action, including a statement of the  
27 necessity of immediate action to protect the public welfare, shall be sent in  
28 accordance with subdivision (f). If the certificate holder requests an administrative  
29 hearing pursuant to subdivision (g), the state department shall hold the  
30 administrative hearing as soon as possible but not later than 30 calendar days from  
31 receipt of the request for a hearing. A written hearing decision upholding or setting  
32 aside the action shall be sent by certified mail to the certificate holder within 30  
33 calendar days of the hearing.

34 (i) Upon the expiration of the term of suspension, he or she shall be reinstated by  
35 the state department and shall be entitled to resume practice unless it is established  
36 to the satisfaction of the state department that the person has practiced as a home  
37 health aide in California during the term of suspension. In this event, the state  
38 department shall revoke the person's certificate.

39 (j) Upon a determination to deny an application or deny, revoke, or suspend a  
40 certificate, the department shall notify the employer of the applicant or certificate  
41 holder in writing of that determination, and whether the determination is final, or  
42 whether a hearing is pending relating to this determination. If a licensee or facility  
43 is required to deny employment or terminate employment of the employee based

1 upon notice from the state that the employee is determined to be unsuitable for  
2 employment under this section, the licensee or facility shall not incur criminal,  
3 civil, unemployment insurance, workers' compensation, or administrative liability  
4 as a result of that denial or termination.

5 **Comment.** Subdivision (g)(2) of Section 1736.5 is amended to reflect advances in recording  
6 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
7 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio  
8 technology," "audio recording," or "audio record," as context required).

9 **Health & Safety Code § 7150.5 (amended). Anatomical gift**

10 SEC. \_\_\_\_\_. Section 7150.5 of the Health and Safety Code is amended to read:

11 7150.5. (a) Except as provided in subdivision (b) of Section 12811 of, and  
12 subdivision (b) of Section 13005 of, the Vehicle Code, an individual who is at  
13 least 18 years of age, or an individual who is between 15 and 18 years of age as  
14 specified in subdivision (m), may make an anatomical gift for any of the purposes  
15 stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of  
16 those purposes, or refuse to make an anatomical gift.

17 (b) An anatomical gift may be made only by one of the following:

18 (1) A document of gift signed by the donor.

19 (2) A document of gift signed by another individual and by two witnesses, all of  
20 whom have signed at the direction and in the presence of the donor and of each  
21 other, and state that it has been so signed.

22 (3) A document of gift orally made by a donor by means of ~~a tape~~ an audio  
23 recording in his or her own voice.

24 (c) If a document of gift is attached to or imprinted on a donor's motor vehicle  
25 operator's or chauffeur's license, the document of gift shall comply with  
26 subdivision (b). Revocation, suspension, expiration, or cancellation of the license  
27 does not invalidate the anatomical gift.

28 (d) A document of gift may designate a particular physician or surgeon to carry  
29 out the appropriate procedures. In the absence of a designation or if the designee is  
30 not available, the donee or other person authorized to accept the anatomical gift  
31 may employ or authorize any physician, surgeon, technician, or enucleator to carry  
32 out the appropriate procedures.

33 (e) An anatomical gift by will takes effect upon death of the testator, whether or  
34 not the will is probated. If, after death, the will is declared invalid for testamentary  
35 purposes, the validity of the anatomical gift is unaffected.

36 (f) A donor may amend or revoke an anatomical gift, not made by will, only by  
37 one or more of the following:

38 (1) A signed statement.

39 (2) An oral statement made in the presence of two individuals or by means of a  
40 ~~tape~~ an audio recording in the donor's own voice.

41 (3) Any form of communication during a terminal illness or injury addressed to  
42 a physician or surgeon.

1 (4) The delivery of a signed statement to a specified donee to whom a document  
2 of gift had been delivered.

3 (g) The donor of an anatomical gift made by will may amend or revoke the gift  
4 in the manner provided for amendment or revocation of wills, or as provided in  
5 subdivision (f).

6 (h) An anatomical gift that is not revoked by the donor before death is  
7 irrevocable and does not require the consent or concurrence of any person after the  
8 donor's death.

9 (i) An individual may refuse to make an anatomical gift of the individual's body  
10 or part by a writing signed in the same manner as a document of gift, a statement  
11 attached to or imprinted on a donor's motor vehicle operator's or chauffeur's  
12 license, or any other writing used to identify the individual as refusing to make an  
13 anatomical gift. During a terminal illness or injury, the refusal may be an oral  
14 statement or other form of communication.

15 (j) In the absence of contrary indications by the donor, an anatomical gift of a  
16 part is neither a refusal to give other parts nor a limitation on an anatomical gift  
17 under Section 7151 or on a removal or release of other parts under Section 7151.5.

18 (k) In the absence of contrary indications by the donor, a revocation or  
19 amendment of an anatomical gift is not a refusal to make another anatomical gift.  
20 If the donor intends a revocation to be a refusal to make an anatomical gift, the  
21 donor shall make the refusal pursuant to subdivision (i).

22 (l) Any signed statement that is in compliance with this chapter, or a driver's  
23 license or identification card that meets the requirements for validity set forth in  
24 subdivision (b) of Section 12811 of the Vehicle Code or subdivision (b) of Section  
25 13005 of the Vehicle Code, shall be honored and no further consent or approval  
26 from the next of kin or other person listed in subdivision (a) of Section 7151 shall  
27 be required.

28 (m) Notwithstanding subdivision (a), an individual who is between 15 and 18  
29 years of age may make an anatomical gift for any purpose stated in subdivision (a)  
30 of Section 7153, limit an anatomical gift to one or more of those purposes, refuse  
31 to make an anatomical gift, or amend or revoke an anatomical gift, only upon the  
32 written consent of a parent or guardian.

33 **Comment.** Section 7150.5 is amended to reflect advances in recording technology and for  
34 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
35 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"  
36 "audio recording," or "audio record," as context required).

37 **Health & Safety Code § 7151.5 (amended). Removal of body part from decedent**

38 SEC. \_\_\_\_\_. Section 7151.5 of the Health and Safety Code is amended to read:

39 7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner  
40 may release and permit the removal of a part from a body within that official's  
41 custody, for transplantation, therapy, or reconditioning, if all of the following  
42 occur:

1 (1) The official has received a request for the part from a hospital, physician,  
2 surgeon, or procurement organization or, in the case of a pacemaker, from a  
3 person who reconditions pacemakers.

4 (2) A reasonable effort has been made to locate and inform persons listed in  
5 subdivision (a) of Section 7151 of their option to make, or object to making, an  
6 anatomical gift. Except in the case where the useful life of the part does not  
7 permit, a reasonable effort shall be deemed to have been made when a search for  
8 the persons has been underway for at least 12 hours. The search shall include a  
9 check of local police missing persons records, examination of personal effects, and  
10 the questioning of any persons visiting the decedent before his or her death or in  
11 the hospital, accompanying the decedent's body, or reporting the death, in order to  
12 obtain information that might lead to the location of any persons listed in  
13 subdivision (a) of Section 7151.

14 (3) The official does not know of a refusal or contrary indication by the decedent  
15 or objection by a person having priority to act as listed in subdivision (a) of  
16 Section 7151.

17 (4) The removal will be by a physician, surgeon, or technician; but in the case of  
18 eyes, by one of them or by an enucleator.

19 (5) The removal will not interfere with any autopsy or investigation.

20 (6) The removal will be in accordance with accepted medical standards.

21 (7) Cosmetic restoration will be done, if appropriate.

22 (b) Except as provided in Section 7152, if the body is not within the custody of  
23 the coroner or medical examiner, a hospital may release and permit the removal of  
24 a part from a body if the hospital, after a reasonable effort has been made to locate  
25 and inform persons listed in subdivision (a) of Section 7151 of their option to  
26 make, or object to making, an anatomical gift, determines and certifies that the  
27 persons are not available. A search for the persons listed in subdivision (a) of  
28 Section 7151 may be initiated in anticipation of death, but, except in the case  
29 where the useful life of the part does not permit, the determination may not be  
30 made until the search has been underway for at least 12 hours. The search shall  
31 include a check of local police missing persons records, examination of personal  
32 effects, and the questioning of any persons visiting the decedent before his or her  
33 death or in the hospital, accompanying the decedent's body, or reporting the death,  
34 in order to obtain information that might lead to the location of any persons listed  
35 in subdivision (a) of Section 7151.

36 (c) Except as provided in Section 7152, if the body is not within the custody of  
37 the coroner or medical examiner or a hospital, the local public health officer may  
38 release and permit the removal of any part from a body in the local public health  
39 officer's custody for transplantation, therapy, or reconditioning if the requirements  
40 of subdivision (a) are met.

41 (d) An official or hospital releasing and permitting the removal of a part shall  
42 maintain a permanent record of the name of the decedent, the person making the

1 request, the date and purpose of the request, the part requested, any required  
2 written or recorded telephonic consent, and the person to whom it was released.

3 (e) In the case of corneal material to be used for the purpose of transplantation,  
4 the official releasing and permitting the removal of the corneal material and the  
5 requesting entity shall obtain and keep on file for not less than three years a copy  
6 of any one of the following:

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

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

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

19 These requirements are necessary only if the official agency chooses to  
20 participate in the transfer of corneal tissue with the requesting entity.

21 (f) Neither the coroner nor medical examiner authorizing the removal of a body  
22 part or tissue, nor any hospital, medical center, tissue bank, storage facility, or  
23 person acting upon the request, order, or direction of the coroner or medical  
24 examiner in the removal of a body part or tissue pursuant to this section, shall  
25 incur civil liability for the removal in an action brought by any person who did not  
26 object prior to the removal of the body part or tissue, nor be subject to criminal  
27 prosecution for the removal of the body part or tissue pursuant to this section.

28 **Comment.** Subdivision (e)(2) of Section 7151.5 is amended to reflect advances in recording  
29 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
30 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio  
31 technology," "audio recording," or "audio record," as context required).

32 **Health & Safety Code § 7158.3 (amended). Duties of donee of anatomical gift**

33 SEC. \_\_\_\_\_. Section 7158.3 of the Health and Safety Code is amended to read:

34 7158.3. (a) The following definitions shall apply for purposes of this section:

35 (1) "Cosmetic surgery" means surgery that is performed to alter or reshape  
36 normal structures of the body in order to improve appearance.

37 (2) "Donee" means a hospital, as defined in subdivision (f) of Section 7150.1, or  
38 an organ procurement organization, as defined in subdivision (j) of Section  
39 7150.1, or a tissue bank licensed pursuant to Chapter 4.1 (commencing with  
40 Section 1635) of Division 2.

1 (3) “Reconstructive surgery” means surgery performed to correct or repair  
2 abnormal structures of the body caused by congenital defects, developmental  
3 abnormalities, trauma, infection, tumors, or disease to do either of the following:

4 (A) To improve function.

5 (B) To create a normal appearance, to the extent possible.

6 (b) For purposes of accepting anatomical gifts, as defined in subdivision (a) of  
7 Section 7150.1, a donee shall do all of the following:

8 (1) Revise existing informed consent forms and procedures to advise a donor or,  
9 if the donor is deceased, the donor’s representative, that tissue banks work with  
10 both nonprofit and for-profit tissue processors and distributors, that it is possible  
11 that donated skin may be used for cosmetic or reconstructive surgery purposes,  
12 and that donated tissue may be used for transplants outside of the United States.

13 (2) The revised consent form or procedure shall separately allow the donor or  
14 donor’s representative to withhold consent for any of the following:

15 (A) Donated skin to be used for cosmetic surgery purposes.

16 (B) Donated tissue to be used for applications outside of the United States.

17 (C) Donated tissue to be used by for-profit tissue processors and distributors.

18 (3) A donee shall be deemed to have complied with paragraph (2) by  
19 designating tissue that has been donated with specific restrictions on its use. Once  
20 the donee transfers the tissue to a separate entity, the donee’s responsibility for  
21 compliance with any restrictions on the tissue ceases.

22 (4) The donor may recover, in a civil action against any individual or entity that  
23 fails to comply with this subdivision, civil penalties to be assessed in an amount  
24 not less than one thousand dollars (\$1,000) and not more than five thousand  
25 dollars (\$5,000), plus court costs, as determined by the court. A separate penalty  
26 shall be assessed for each individual or entity that fails to comply with this  
27 subdivision. Any civil penalty provided under this paragraph shall be in addition  
28 to any license revocation or suspension, if appropriate, authorized under  
29 subdivision (c).

30 (5) If the consent of the donor or donor’s representative is obtained in writing,  
31 the donee shall offer to provide the donor or donor’s representative with a copy of  
32 the completed consent form. If consent is obtained by telephone, the donee shall  
33 advise the donor or donor’s representative that the conversation will be ~~tape~~ audio  
34 recorded for verification and enforcement purposes, and shall offer to provide the  
35 donor or donor’s representative with a written copy of the recorded telephonic  
36 consent form.

37 (c) Violation of this section by a licensed health care provider constitutes  
38 unprofessional conduct.

39 (d) This section shall not apply to the removal of sperm or ova pursuant to  
40 Section 2260 of the Business and Professions Code.

41 **Comment.** Subdivision (b)(5) of Section 7158.3 is amended to reflect advances in recording  
42 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068



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

3 **Health & Safety Code § 13220 (amended). Furnishing emergency procedures to persons**  
4 **entering buildings**

5 SEC. \_\_\_\_\_. Section 13220 of the Health and Safety Code is amended to read:

6 13220. The owner or operator of any of the following buildings shall provide to  
7 persons entering those buildings specific emergency procedures to be followed in  
8 the event of fire, including procedures for handicapped and nonambulatory  
9 persons:

10 (a) In the case of privately owned highrise structures, as defined in Section  
11 13210, and office buildings two stories or more in height, the emergency  
12 procedure information shall be made available in a conspicuous area of the  
13 structure that is easily accessible to all persons entering the structure, designated  
14 pursuant to regulations of the State Fire Marshal.

15 (b) In the case of hotels and motels, as defined in subdivision (b) of Section  
16 25503.16 of the Business and Professions Code, the emergency procedure  
17 information shall be posted in a conspicuous place in every room available for  
18 rental in the hotel or motel, or, at the option of the hotel or motel operator, it shall  
19 be provided through the use of brochures, pamphlets, ~~videotapes~~ video recordings,  
20 or other means, pursuant to regulations adopted by the State Fire Marshal.

21 (c) In the case of apartment houses two stories or more in height that contain  
22 three or more dwelling units, and where the front door opens into an interior  
23 hallway or an interior lobby area, the emergency information shall be provided as  
24 follows:

25 (1) Information for exiting the structure shall be posted on signs using  
26 international symbols at every stairway landing, at every elevator landing, at an  
27 intermediate point of any hallway exceeding 100 feet in length, at all hallway  
28 intersections, and immediately inside all public entrances to the building.

29 (2) Information shall be provided to all tenants of record, through the use of  
30 brochures, pamphlets, or ~~videotapes~~ video recordings, if any of these items is  
31 available, or this requirement may be satisfied pursuant to regulations adopted by  
32 the State Fire Marshal.

33 (3) If the owner or operator, or any individual acting on behalf of the owner or  
34 operator, of an apartment house, as defined in this subdivision, negotiates a lease,  
35 sublease, rental contract, or other term of tenancy contract or agreement in any  
36 language other than English, the information required to be provided pursuant to  
37 paragraph (2) of this subdivision shall be provided in English, in international  
38 symbols, and in the four most common non-English languages spoken in  
39 California, as determined by the State Fire Marshal.

40 (4) This subdivision shall become operative on July 1, 1996.

41 (d) On or before July 1, 1996, the State Fire Marshal shall adopt, for use in  
42 apartment houses described in subdivision (c), a consumer-oriented model

1 brochure or pamphlet that includes general emergency procedure information in  
2 English, in international symbols, and in the four most common non-English  
3 languages spoken in California, as determined by the State Fire Marshal.

4 (e) An owner, agent, operator, translator, or transcriber who provides emergency  
5 procedure information pursuant to this section in good faith and without gross  
6 negligence shall be held harmless for any errors in the translation or transcription  
7 of that emergency information. This limited immunity shall apply only to errors in  
8 the translation or transcription and not to the providing of the information required  
9 to be provided pursuant to this section.

10 (f) Unless expressly stated, nothing in this section shall be deemed to require an  
11 owner or operator of any of the buildings listed in this section to provide  
12 emergency procedure information in any language other than English, or through  
13 the use of international symbols.

14 **Comment.** Section 13220 is amended to reflect advances in recording technology and for  
15 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
16 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
17 “audio recording,” or “audio record,” as context required).

18 **Health & Safety Code § 13221 (amended). Regulations for furnishing emergency**  
19 **procedures**

20 SEC. \_\_\_\_\_. Section 13221 of the Health and Safety Code is amended to read:

21 13221. The State Fire Marshal shall adopt regulations for the furnishing of  
22 emergency procedure information according to this chapter. Those regulations  
23 may include the general contents of brochures, pamphlets, signs, or ~~videotapes~~  
24 video recordings used in furnishing emergency procedure information, but shall  
25 provide for at least the following:

26 (a) A reference to the posting of exit plans for the structure.

27 (b) A general explanation of operation of the fire alarm system of the structure.

28 (c) Other fire emergency procedures.

29 **Comment.** Section 13221 is amended to reflect advances in recording technology and for  
30 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
31 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
32 “audio recording,” or “audio record,” as context required).

33 **Health & Safety Code § 25201.11 (amended). Departmental copyright protection and other**  
34 **rights**

35 SEC. \_\_\_\_\_. Section 25201.11 of the Health and Safety Code is amended to read:

36 25201.11. (a) Copyright protection and all other rights and privileges provided  
37 pursuant to Title 17 of the United States Code are available to the department to  
38 the fullest extent authorized by law, and the department may sell, lease, or license  
39 for commercial or noncommercial use any work, including, but not limited to,  
40 ~~videotapes~~ video recordings, ~~audiotapes~~ audio recordings, books, pamphlets, and  
41 computer software as that term is defined in Section 6254.9 of the Government

1 Code, that the department produces whether the department is entitled to that  
2 copyright protection or not.

3 (b) Any royalties, fees, or compensation of any type that is paid to the  
4 department to make use of a work entitled to copyright protection shall be  
5 deposited in the Hazardous Waste Control Account.

6 (c) Nothing in this section is intended to limit any powers granted to the  
7 department pursuant to Section 6254.9 of the Government Code or any other  
8 provision of law.

9 **Comment.** Section 25201.11 is amended to reflect advances in recording technology and for  
10 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
11 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
12 “audio recording,” or “audio record,” as context required).

13 **Health & Safety Code § 40828 (amended). Testimony by members of public**

14 SEC. \_\_\_\_\_. Section 40828 of the Health and Safety Code is amended to read:

15 40828. (a) A hearing board shall allow interested members of the public a  
16 reasonable opportunity to testify with regards to the matter under consideration,  
17 and shall consider such testimony in making its decision.

18 (b) The hearing board shall prepare a record of the witnesses and the testimony  
19 of each witness at the hearing. Such a record may be ~~a tape~~ an audio recording.  
20 The record shall be retained by the hearing board while the variance is in effect, or  
21 for the period of one year, whichever is longer.

22 **Comment.** Section 40828 is amended to reflect advances in recording technology and for  
23 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
24 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
25 “audio recording,” or “audio record,” as context required).

26 **Health & Safety Code § 100171 (amended). Adjudicative hearing**

27 SEC. \_\_\_\_\_. Section 100171 of the Health and Safety Code is amended to read:

28 100171. Notwithstanding any other provision of law, whenever the department  
29 is authorized or required by statute, regulation, due process (14th amendment,  
30 United States Constitution; subdivision (a) of Section 7 of Article I, California  
31 Constitution), or a contract, to conduct an adjudicative hearing leading to a final  
32 decision of the director or the department, the following shall apply:

33 (a) The proceeding shall be conducted pursuant to the administrative  
34 adjudication provisions of Chapter 4.5 (commencing with Section 11400) and  
35 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of  
36 the Government Code, except as specified in this section.

37 (b) Notwithstanding Section 11502 of the Government Code, whenever the  
38 department conducts a hearing under Chapter 4.5 (commencing with Section  
39 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
40 Title 2 of the Government Code, the hearing shall be conducted before an  
41 administrative law judge selected by the department and assigned to a hearing

1 office that complies with the procedural requirements of Chapter 4.5 (commencing  
2 with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

3 (c)(1) Notwithstanding Section 11508 of the Government Code, whenever the  
4 department conducts a hearing under Chapter 4.5 (commencing with Section  
5 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
6 Title 2 of the Government Code, the time and place of the hearing shall be  
7 determined by the staff assigned to the hearing office of the department, except as  
8 provided in paragraph (2) or unless the department by regulation specifies  
9 otherwise.

10 (2) Formal hearings requested by institutional Medi-Cal providers and health  
11 facilities shall be held in Sacramento.

12 (d)(1) Unless otherwise specified in this section, the following sections of the  
13 Government Code shall apply to any adjudicative hearing conducted by the  
14 department only if the department has not, by regulation, specified an alternative  
15 procedure for the particular type of hearing at issue: Section 11503 (relating to  
16 accusations), Section 11504 (relating to statements of issues), Section 11505  
17 (relating to the contents of the statement to respondent), Section 11506 (relating to  
18 the notice of defense), Section 11507.6 (relating to discovery rights and  
19 procedures), Section 11508 (relating to the time and place of hearings), and  
20 Section 11516 (relating to amendment of accusations).

21 (2) Any alternative procedure specified by the department in accordance with  
22 this subdivision shall conform to the purpose of the Government Code provision it  
23 replaces insofar as it is possible to do so consistent with the specific procedural  
24 requirements applicable to the type of hearing at issue.

25 (3) Any alternative procedures adopted by the department under this subdivision  
26 shall not diminish the amount of notice given of the issues to be heard by the  
27 department or deprive appellants of the right to discovery suitable to the particular  
28 proceedings. Except as specified in paragraph (2) of subdivision (c), modifications  
29 of timeframes or of the place of hearing made by regulation may not lengthen  
30 timeframes within which the department is required to act nor require hearings to  
31 be held at a greater distance from the appellant's place of residence or business  
32 than is the case under the otherwise applicable Government Code provision.

33 (e) The specific timelines specified in Section 11517 of the Government Code  
34 shall not apply to any adjudicative hearing conducted by the department to the  
35 extent that the department has, by regulation, specified different timelines for the  
36 particular type of hearing at issue.

37 (f) In the case of any adjudicative hearing conducted by the department,  
38 "transcript," as used in subdivision (c) of Section 11517 of the Government Code,  
39 shall be deemed to include any alternative form of recordation of the oral  
40 proceedings, including, but not limited to, an ~~audiotape~~ audio recording.

41 (g) Pursuant to Section 11415.50 of the Government Code, the department may,  
42 by regulation, provide for any appropriate informal procedure to be used for an  
43 informal level of review that does not itself lead to a final decision of the

1 department or the director. The procedures specified in Article 10 (commencing  
2 with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the  
3 Government Code shall not apply to any such an informal level of review.  
4 Informal conferences concerning appeals by institutional Medi-Cal providers and  
5 health facilities may be held in Sacramento or Los Angeles.

6 (h) Notwithstanding any other provision of law, any adjudicative hearing  
7 conducted by the department that is conducted pursuant to a federal statutory or  
8 regulatory requirement that contains specific procedures may be conducted  
9 pursuant to those procedures to the extent they are inconsistent with the  
10 procedures specified in this section.

11 (i) Nothing in this section shall apply to a fair hearing involving a Medi-Cal  
12 beneficiary insofar as the hearing is, by agreement or otherwise, heard before an  
13 administrative law judge employed by the State Department of Social Services, or  
14 insofar as the hearing is being held pursuant to Division 4.5 (commencing with  
15 Section 4500) of the Welfare and Institutions Code in connection with services  
16 provided by the State Department of Developmental Services under applicable  
17 federal medicaid waivers. Nothing in this subdivision shall be interpreted as  
18 abrogating the authority of the State Department of Health Services as the single  
19 state agency under the state medicaid plan.

20 (j) Nothing in this provision shall supersede express provisions of law that apply  
21 to any hearing that is not adjudicative in nature or that does not involve due  
22 process rights specific to an individual or specific individuals, as opposed to the  
23 general public or a segment of the general public.

24 **Comment.** Subdivision (f) of Section 100171 is amended to reflect advances in recording  
25 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
26 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
27 technology,” “audio recording,” or “audio record,” as context required).

28 **Health & Safety Code § 127240 (amended). Informal public hearing**

29 SEC. \_\_\_\_\_. Section 127240 of the Health and Safety Code is amended to read:

30 127240. (a) Notwithstanding subdivision (b), (c), (d), (e), or (f) of Section  
31 127235, if the office orders a hearing on an application, the applicant may request  
32 an informal hearing of the matter, described in this section, in lieu of, and in the  
33 alternative to, the formal procedures described in subdivisions (b), (c), (d), (e), and  
34 (f) of Section 127235.

35 (b) If an applicant requests an informal hearing and the office concurs with the  
36 request, the office shall proceed as follows:

37 (1) Within five calendar days after receipt of the request for an informal public  
38 hearing, the office shall order the informal public hearing by the service of a copy  
39 of the order on the applicant. The order shall include the staff report and  
40 recommendations prepared by staff of the office. Except as otherwise agreed by  
41 the applicant and the office, the informal public hearing shall commence within 20  
42 days of the date of the order. Upon the scheduling of the hearing, the office shall

1 promptly serve notice of the date, location, and time of the informal public hearing  
2 upon the applicant. The office shall also publish a notice of the date, location, and  
3 time of the informal public hearing in at least one newspaper of general circulation  
4 in the health service area served by the applicant. The notice shall also include the  
5 name and address of the applicant, the nature of the proposed project, and other  
6 information, deemed relevant by the office.

7 (2) The informal public hearing shall not be conducted in accordance with  
8 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of  
9 the Government Code. The informal public hearing shall be conducted by an  
10 employee of the office designated by the office director. The person conducting  
11 the informal public hearing may exercise all powers relating to the conduct of the  
12 hearing, including the power to reasonably limit the length of oral presentations by  
13 any person who has been allowed to make a statement.

14 The informal public hearing shall be conducted as follows:

15 (A) The applicant shall be given an opportunity to present the merits of the  
16 project and to address the issues raised by the staff report and recommendations.

17 (B) The office staff shall be given an opportunity to present their analysis of the  
18 project.

19 (C) Other interested persons shall be given an opportunity to present written or  
20 oral statements.

21 (D) The person conducting the informal public hearing may question any person  
22 making a written or oral statement and may give the applicant and office staff an  
23 opportunity to question any person who has made a written or oral statement.

24 (E) The applicant and staff shall be given an opportunity to make closing  
25 statements.

26 (F) The office shall make ~~a tape~~ an audio or video recording of the hearing, and  
27 copies of the ~~tape~~ recording shall be made available at cost upon reasonable  
28 notice. However, the applicant shall have a right to bring a certified shorthand  
29 reporter to be used in place of the ~~tape~~ audio or video recording, provided that he  
30 or she provides the office with a copy of the transcript.

31 (c) The informal public hearing shall conclude within 10 calendar days after  
32 commencement of the hearing unless one of the following occurs:

33 (1) The applicant agrees to extend the time for conclusion of the hearing.

34 (2) The hearing is ongoing and continuing during consecutive business days, in  
35 which case it shall be concluded as soon as reasonably practicable thereafter.

36 (d) Within 10 days after the conclusion of the informal public hearing, the  
37 person conducting the hearing shall render a proposed decision supported by  
38 findings of fact, based solely upon the record of the hearing. The proposed  
39 decision shall be served upon the applicant and the office staff.

40 (e) The director shall make a final decision on an application within 10 calendar  
41 days after issuance of the proposed decision. The decisions shall either approve  
42 the application, approve it with modifications, reject it, or approve it with  
43 conditions mutually agreed upon by the applicant and the office. The failure of any

1 applicant to fulfill the conditions under which the certificate of need was granted  
2 shall constitute grounds for revocation of the certificate of need.

3 (f) Notice of the substance of the office’s decisions shall be published in a  
4 newspaper of general circulation within the health service area served by the  
5 applicant, within 10 calendar days following the decision.

6 (g) Whether or not an informal hearing is granted shall be at the discretion of the  
7 office.

8 **Comment.** Section 127240 is amended to reflect advances in recording technology and for  
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
10 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
11 “audio recording,” or “audio record,” as context required).

## 12 INSURANCE CODE

### 13 **Ins. Code § 1758.97 (amended). Prerequisites to sale or offer to sell insurance**

14 SEC. \_\_\_\_\_. Section 1758.97 of the Insurance Code is amended to read:

15 1758.97. A credit insurance agent shall not sell or offer to sell insurance  
16 pursuant to this article unless all of the following conditions are satisfied:

17 (a) The credit insurance agent provides brochures or other written materials to  
18 the prospective purchaser that do all of the following:

19 (1) Summarize the material terms and conditions of coverage offered, including  
20 the identity of the insurer.

21 (2) Describe the process for filing a claim, including a toll-free telephone  
22 number to report a claim.

23 (3) Disclose any additional information on the price, benefits, exclusions,  
24 conditions, or other limitations of those policies that the commissioner may by  
25 rule prescribe.

26 (b) The credit insurance agent makes all of the following disclosures, either with  
27 or as part of each individual policy or group certificate, or with a notice of  
28 proposed insurance, or, if the insurance is sold at the same time and place as the  
29 related credit transaction, in a statement acknowledged by the purchaser in writing  
30 on a separate form, electronically, digitally, or by ~~tape~~ audio recording:

31 (1) That the purchase of the kinds of insurance prescribed in this article is not  
32 required in order to secure the loan or an extension of credit.

33 (2) That the insurance coverage offered by the credit insurance agent may  
34 provide a duplication of coverage already provided by a purchaser’s other personal  
35 insurance policies or by another source of coverage.

36 (3) That the endorsee is not qualified or authorized to evaluate the adequacy of  
37 the purchaser’s existing coverages, unless the individual is licensed pursuant to  
38 Article 3 (commencing with Section 1631).

39 (4) That the customer may cancel the insurance at any time. If the customer  
40 cancels within 30 days from the delivery of the insurance policy, certificate, or  
41 notice of proposed insurance, the premium will be refunded in full. If the customer

1 cancels at any time thereafter, any unearned premium will be refunded in  
2 accordance with applicable law.

3 (c) Evidence of coverage is provided to every person who elects to purchase that  
4 coverage.

5 (d) Costs for the insurance are separately itemized in any loan, credit, or retail  
6 agreement.

7 (e) The insurance is provided under an individual policy issued to the purchaser  
8 or under a group or master policy issued to the organization licensed as a credit  
9 insurance agent by an insurer authorized to transact the applicable kinds or types  
10 of insurance in this state. Any of the conditions and disclosures specified in this  
11 section shall be deemed satisfied if the consumer is otherwise provided with the  
12 information required in this section by any other disclosures required by existing  
13 federal or state law or regulations.

14 No statement, disclosure, or notice made for the purpose of compliance with  
15 this section shall be construed to cause the policy form, certificate of insurance, or  
16 notice of proposed insurance, by themselves, to be considered nonstandard forms,  
17 as described in Article 6.9 (commencing with Section 2249) of Subchapter 2 of  
18 Chapter 5 of Title 10 of the California Code of Regulations.

19 **Comment.** Subdivision (b) of Section 1758.97 is amended to reflect advances in recording  
20 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
21 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
22 technology,” “audio recording,” or “audio record,” as context required).

23 **Ins. Code § 2071.1 (amended). Examination of insured**

24 SEC. \_\_\_\_\_. Section 2071.1 of the Insurance Code is amended to read:

25 2071.1. (a) This section applies to an examination of an insured under oath  
26 pursuant to Section 2071 labeled “Requirements in case loss occurs” and other  
27 relevant provisions of that section, and to any policy that insures property and  
28 contains a provision for examining an insured under oath, when the policy is  
29 originated or renewed on and after January 1, 2002.

30 The following are among the rights of each insured who is requested to submit  
31 to an examination under oath:

32 (1) An insurer that determines that it will conduct an examination under oath of  
33 an insured shall notify the insured of that determination and shall include a copy of  
34 this section in the notification.

35 (2) An insurer may conduct an examination under oath only to obtain  
36 information that is relevant and reasonably necessary to process or investigate the  
37 claim.

38 (3) An examination under oath may only be conducted upon reasonable notice,  
39 at a reasonably convenient place and for a reasonable length of time.

40 (4) The insured may be represented by counsel and may record the examination  
41 proceedings in their entirety.



1 (5) The insurer shall notify the insured that, upon request and free of charge, it  
2 will provide the insured with a copy of the transcript of the proceedings and ~~a tape~~  
3 an audio or video recording of the proceedings, if one exists. Where an insured  
4 requests a copy of the transcript, the ~~tape recording~~, or both, of their examination  
5 under oath, the insurer shall provide it within 10 business days of receipt by the  
6 insurer or its counsel of the transcript, the ~~tape recording~~, or both. An insured may  
7 make sworn corrections to the transcript so it accurately reflects the testimony  
8 under oath.

9 (6) In an examination under oath, an insured may assert any objection that can  
10 be made in a deposition under state or federal law. However, if as a result of  
11 asserting an objection an insured fails to provide an answer to a material question,  
12 and that failure prevents the insurer from being able to determine the extent of loss  
13 and validity of the claim, the rights of the insured under the contract may be  
14 affected.

15 (7) An insured who submits a fraudulent claim may be subject to all criminal  
16 and civil penalties applicable under law.

17 (b) The department shall conduct a study quantifying the number of  
18 examinations under oath performed by carriers regulated by the department and  
19 the number of contacts made by consumers regarding alleged concerns with the  
20 utilization of the examination under oath process for the resolution of pending  
21 claims. The department shall report both the number of examinations under oath  
22 performed by each carrier and the number of justified and unjustified claims  
23 alleged by insureds as defined in the Insurance Code. To the best extent  
24 practicable, the department shall also determine if any of these complaints also  
25 resulted in suspected fraudulent claims with the department's fraud division.

26 (c) The department shall also survey licensed carriers as to the number of  
27 suspected fraudulent claims under residential property insurance policies that are  
28 submitted to the department's fraud division as required by law, and that resulted,  
29 or eventually resulted, in the utilization of the examination under oath process.  
30 Policies of residential property insurance shall be as defined in Section 10087.

31 (d) The department shall submit the findings of this report to the Chairs of the  
32 Assembly and Senate Committees on Insurance no later than March 1, 2003.

33 **Comment.** Subdivision (a)(5) of Section 2071.1 is amended to reflect advances in recording  
34 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
35 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio  
36 technology," "audio recording," or "audio record," as context required).

37  
38  
39  
40  
41  
PENAL CODE

**Penal Code § 298.1 (amended). Refusal to give specimen, sample or impression**

SEC. \_\_\_\_\_. Section 298.1 of the Penal Code is amended to read:

298.1. (a) As of the effective date of this chapter, any person who refuses to give  
any or all of the following, blood specimens, saliva samples, or thumb or palm

1 print impressions as required by this chapter, once he or she has received written  
2 notice from the Department of Justice, the Department of Corrections and  
3 Rehabilitation, any law enforcement personnel, or officer of the court that he or  
4 she is required to provide specimens, samples, and print impressions pursuant to  
5 this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of  
6 the following, a blood specimen, saliva sample, or thumb or palm print impression  
7 is punishable as a separate offense by both a fine of five hundred dollars (\$500)  
8 and imprisonment of up to one year in a county jail, or if the person is already  
9 imprisoned in the state prison, by sanctions for misdemeanors according to a  
10 schedule determined by the Department of Corrections and Rehabilitation.

11 (b)(1) Notwithstanding subdivision (a), authorized law enforcement, custodial,  
12 or corrections personnel, including peace officers as defined in Sections 830,  
13 830.1, subdivision (d) of Section 830.2, Sections 830.5, 830.38, or 830.55, may  
14 employ reasonable force to collect blood specimens, saliva samples, or thumb or  
15 palm print impressions pursuant to this chapter from individuals who, after written  
16 or oral request, refuse to provide those specimens, samples, or thumb or palm print  
17 impressions.

18 (2) The withdrawal of blood shall be performed in a medically approved manner  
19 in accordance with the requirements of paragraph (2) of subdivision (b) of Section  
20 298.

21 (3) The use of reasonable force as provided in this subdivision shall be carried  
22 out in a manner consistent with regulations and guidelines adopted pursuant to  
23 subdivision (c).

24 (c)(1) The Department of Corrections Rehabilitation and the Division of  
25 Juvenile Justice shall adopt regulations governing the use of reasonable force as  
26 provided in subdivision (b), which shall include the following:

27 (A) The term “use of reasonable force” shall be defined as the force that an  
28 objective, trained and competent correctional employee, faced with similar facts  
29 and circumstances, would consider necessary and reasonable to gain compliance  
30 with this chapter.

31 (B) The use of reasonable force shall not be authorized without the prior written  
32 authorization of the supervising officer on duty. The authorization shall include  
33 information that reflects the fact that the offender was asked to provide the  
34 requisite specimen, sample, or impression and refused.

35 (C) The use of reasonable force shall be preceded by efforts to secure voluntary  
36 compliance with this section.

37 (D) If the use of reasonable force includes a cell extraction, the regulations shall  
38 provide that the extraction be ~~videotaped~~ video recorded.

39 (2) The Corrections Standards Authority shall adopt guidelines governing the  
40 use of reasonable force as provided in subdivision (b) for local detention facilities,  
41 which shall include the following:

42 (A) The term “use of reasonable force” shall be defined as the force that an  
43 objective, trained and competent correctional employee, faced with similar facts

1 and circumstances, would consider necessary and reasonable to gain compliance  
2 with this chapter.

3 (B) The use of reasonable force shall not be authorized without the prior written  
4 authorization of the supervising officer on duty. The authorization shall include  
5 information that reflects the fact that the offender was asked to provide the  
6 requisite specimen, sample, or impression and refused.

7 (C) The use of reasonable force shall be preceded by efforts to secure voluntary  
8 compliance with this section.

9 (D) If the use of reasonable force includes a cell extraction, the extraction shall  
10 be ~~videotaped~~ video recorded.

11 (3) The Department of Corrections and Rehabilitation, the Division of Juvenile  
12 Justice, and the Corrections Standards Authority shall report to the Legislature not  
13 later than January 1, 2005, on the use of reasonable force pursuant to this section.  
14 The report shall include, but is not limited to, the number of refusals, the number  
15 of incidents of the use of reasonable force under this section, the type of force  
16 used, the efforts undertaken to obtain voluntary compliance, if any, and whether  
17 any medical attention was needed by the prisoner or personnel as a result of force  
18 being used.

19 **Comment.** Section 298.1 is amended to reflect advances in recording technology and for  
20 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
21 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
22 “audio recording,” or “audio record,” as context required).

23 **Penal Code § 599aa (amended). Seizure of birds, animals and related items**

24 SEC. \_\_\_\_\_. Section 599aa of the Penal Code is amended to read:

25 599aa. (a) Any authorized officer making an arrest under Section 597.5 shall,  
26 and any authorized officer making an arrest under Section 597b, 597c, 597j, or  
27 599a may, lawfully take possession of all birds or animals and all paraphernalia,  
28 implements or other property or things used or employed, or about to be  
29 employed, in the violation of any of the provisions of this code relating to the  
30 fighting of birds or animals that can be used in animal or bird fighting, in training  
31 animals or birds to fight, or to inflict pain or cruelty upon animals or birds in  
32 respect to animal or bird fighting.

33 (b) Upon taking possession, the officer shall inventory the items seized and  
34 question the persons present as to the identity of the owner or owners of the items.  
35 The inventory list shall identify the location where the items were seized, the  
36 names of the persons from whom the property was seized, and the names of any  
37 known owners of the property.

38 Any person claiming ownership or possession of any item shall be provided with  
39 a signed copy of the inventory list which shall identify the seizing officer and his  
40 or her employing agency. If no person claims ownership or possession of the  
41 items, a copy of the inventory list shall be left at the location from which the items  
42 were seized.

1 (c) The officer shall file with the magistrate before whom the complaint against  
2 the arrested person is made, a copy of the inventory list and an affidavit stating the  
3 affiant's basis for his or her belief that the property and items taken were in  
4 violation of this code. On receipt of the affidavit, the magistrate shall order the  
5 items seized to be held until the final disposition of any charges filed in the case  
6 subject to subdivision (e).

7 (d) All animals and birds seized shall, at the discretion of the seizing officer, be  
8 taken promptly to an appropriate animal storage facility. For purposes of this  
9 subdivision, an appropriate animal storage facility is one in which the animals or  
10 birds may be stored humanely. However, if an appropriate animal storage facility  
11 is not available, the officer may cause the animals or birds used in committing or  
12 possessed for the purpose of the alleged offenses to remain at the location at which  
13 they were found. In determining whether it is more humane to leave the animals or  
14 birds at the location at which they were found than to take the animals or birds to  
15 an animal storage facility, the officer shall, at a minimum, consider the difficulty  
16 of transporting the animals or birds and the adequacy of the available animal  
17 storage facility. When the officer does not seize and transport all animals or birds  
18 to a storage facility, he or she shall do both of the following:

19 (1) Seize a representative sample of animals or birds for evidentiary purposes  
20 from the animals or birds found at the site of the alleged offenses. The animals or  
21 birds seized as a representative sample shall be transported to an appropriate  
22 animal storage facility.

23 (2) Cause all animals or birds used in committing or possessed for the purpose  
24 of the alleged offenses to be banded, tagged, or marked by microchip, and  
25 photographed or ~~videotaped~~ video recorded for evidentiary purposes.

26 (e)(1) If ownership of the seized animals or birds cannot be determined after  
27 reasonable efforts, the officer or other person named and designated in the order as  
28 custodian of the animals or birds may, after holding the animals and birds for a  
29 period of not less than 10 days, petition the magistrate for permission to humanely  
30 destroy or otherwise dispose of the animals or birds. The petition shall be  
31 published for three successive days in a newspaper of general circulation. The  
32 magistrate shall hold a hearing on the petition not less than 10 days after seizure of  
33 the animals or birds, after which he or she may order the animals or birds to be  
34 humanely destroyed or otherwise disposed of, or to be retained by the officer or  
35 person with custody until the conviction or final discharge of the arrested person.  
36 No animal or bird may be destroyed or otherwise disposed of until 4 days after the  
37 order.

38 (2) Paragraph (1) shall apply only to those animals and birds seized under any of  
39 the following circumstances:

40 (A) After having been used in violation of any of the provisions of this code  
41 relating to the fighting of birds or animals.

42 (B) At the scene or site of a violation of any of the provisions of this code  
43 relating to the fighting of birds or animals.

1 (f) Upon the conviction of the arrested person, all property seized shall be  
2 adjudged by the court to be forfeited and shall then be destroyed or otherwise  
3 disposed of as the court may order. Upon the conviction of the arrested person, the  
4 court may order the person to make payment to the appropriate public entity for  
5 the costs incurred in the housing, care, feeding, and treatment of the animals or  
6 birds. Each person convicted in connection with a particular animal or bird,  
7 excluding any person convicted as a spectator pursuant to Section 597b or 597c, or  
8 subdivision (b) of Section 597.5, may be held jointly and severally liable for  
9 restitution pursuant to this subdivision. This payment shall be in addition to any  
10 other fine or other sentence ordered by the court. The court shall specify in the  
11 order that the public entity shall not enforce the order until the defendant satisfies  
12 all other outstanding fines, penalties, assessments, restitution fines, and restitution  
13 orders. The court may relieve any convicted person of the obligation to make  
14 payment pursuant to this subdivision for good cause but shall state the reasons for  
15 that decision in the record. In the event of the acquittal or final discharge without  
16 conviction of the arrested person, the court shall, on demand, direct the delivery of  
17 the property held in custody to the owner. If the owner is unknown, the court shall  
18 order the animals or birds to be humanely destroyed or otherwise disposed of.

19 **Comment.** Subdivision (d)(2) of Section 599aa is amended to reflect advances in recording  
20 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
21 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
22 technology,” “audio recording,” or “audio record,” as context required).

23 **Penal Code § 868.7 (amended). Closure of examination**

24 SEC. \_\_\_\_\_. Section 868.7 of the Penal Code is amended to read:

25 868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon  
26 motion of the prosecutor, close the examination in the manner described in Section  
27 868 during the testimony of a witness:

28 (1) Who is a minor or a dependent person with a substantial cognitive  
29 impairment, as defined in paragraph (3) of subdivision (f) of Section 288, and is  
30 the complaining victim of a sex offense, where testimony before the general public  
31 would be likely to cause serious psychological harm to the witness and where no  
32 alternative procedures, including, but not limited to, ~~videotaped~~ video recorded  
33 deposition or contemporaneous examination in another place communicated to the  
34 courtroom by means of closed-circuit television, are available to avoid the  
35 perceived harm.

36 (2) Whose life would be subject to a substantial risk in appearing before the  
37 general public, and where no alternative security measures, including, but not  
38 limited to, efforts to conceal his or her features or physical description, searches of  
39 members of the public attending the examination, or the temporary exclusion of  
40 other actual or potential witnesses, would be adequate to minimize the perceived  
41 threat.

1 (b) In any case where public access to the courtroom is restricted during the  
2 examination of a witness pursuant to this section, a transcript of the testimony of  
3 the witness shall be made available to the public as soon as is practicable.

4 ~~This section shall become operative on January 1, 1987.~~

5 **Comment.** Subdivision (a)(1) of Section 868.7 is amended to reflect advances in recording  
6 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
7 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
8 technology,” “audio recording,” or “audio record,” as context required).

9 The second paragraph of subdivision (b) is deleted as obsolete.

10 **Penal Code § 1191.15 (amended). Victim statement**

11 SEC. \_\_\_\_\_. Section 1191.15 of the Penal Code is amended to read:

12 1191.15. (a) The court may permit the victim of any crime, or his or her parent  
13 or guardian if the victim is a minor, or the next of kin of the victim if the victim  
14 has died, to file with the court a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~  
15 video recorded statement, or statement stored on a ~~CD Rom, DVD, or any other~~  
16 recording medium acceptable to the court, expressing his or her views concerning  
17 the crime, the person responsible, and the need for restitution, in lieu of or in  
18 addition to the person personally appearing at the time of judgment and sentence.  
19 The court shall consider the statement filed with the court prior to imposing  
20 judgment and sentence.

21 Whenever an audio or video statement or statement stored on a ~~CD Rom, DVD,~~  
22 ~~or~~ other medium is filed with the court, a written transcript of the statement shall  
23 also be provided by the person filing the statement, and shall be made available as  
24 a public record of the court after the judgment and sentence have been imposed.

25 (b) Whenever a written, audio, or video statement or statement stored on a ~~CD~~  
26 ~~Rom, DVD, or~~ other medium is filed with the court, it shall remain sealed until the  
27 time set for imposition of judgment and sentence except that the court, the  
28 probation officer, and counsel for the parties may view and listen to the statement  
29 not more than two court days prior to the date set for imposition of judgment and  
30 sentence.

31 (c) No person may, and no court shall, permit any person to duplicate, copy, or  
32 reproduce by any audio or visual means any statement submitted to the court  
33 under the provisions of this section.

34 (d) Nothing in this section shall be construed to prohibit the prosecutor from  
35 representing to the court the views of the victim or his or her parent or guardian or  
36 the next of kin.

37 (e) In the event the court permits an audio or video statement or statement stored  
38 on a ~~CD Rom, DVD, or~~ other medium to be filed, the court shall not be  
39 responsible for providing any equipment or resources needed to assist the victim in  
40 preparing the statement.

41 **Comment.** Section 1191.15 is amended to reflect advances in recording technology and for  
42 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing

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

3 **Penal Code § 1203.098. (amended). Batterers’ intervention program facilitators**

4 SEC. \_\_\_\_\_. Section 1203.098 of the Penal Code is amended to read:

5 1203.098. (a) Unless otherwise provided, a person who works as a facilitator in  
6 a batterers’ intervention program that provides programs for batterers pursuant to  
7 subdivision (c) of Section 1203.097 shall complete the following requirements  
8 before being eligible to work as a facilitator in a batterers’ intervention program:

9 (1) Forty hours of core-basic training. A minimum of eight hours of this  
10 instruction shall be provided by a shelter-based or shelter-approved trainer. The  
11 core curriculum shall include the following components:

12 (A) A minimum of eight hours in basic domestic violence knowledge focusing  
13 on victim safety and the role of domestic violence shelters in a community-  
14 coordinated response.

15 (B) A minimum of eight hours in multicultural, cross cultural, and multiethnic  
16 diversity and domestic violence.

17 (C) A minimum of four hours in substance abuse and domestic violence.

18 (D) A minimum of four hours in intake and assessment, including the history of  
19 violence and the nature of threats and substance abuse.

20 (E) A minimum of eight hours in group content areas focusing on gender roles  
21 and socialization, the nature of violence, the dynamics of power and control, and  
22 the affects of abuse on children and others as required by Section 1203.097.

23 (F) A minimum of four hours in group facilitation.

24 (G) A minimum of four hours in domestic violence and the law, ethics, all  
25 requirements specified by the probation department pursuant to Section 1203.097,  
26 and the role of batterers’ intervention programs in a coordinated-community  
27 response.

28 (H) Any person that provides documentation of coursework, or equivalent  
29 training, that he or she has satisfactorily completed, shall be exempt from that part  
30 of the training that was covered by the satisfactorily completed coursework.

31 (I) The coursework that this person performs shall count towards the continuing  
32 education requirement.

33 (2) Fifty-two weeks or no less than 104 hours in six months, as a trainee in an  
34 approved batterers’ intervention program with a minimum of a two-hour group  
35 each week. A training program shall include at least one of the following:

36 (A) Cofacilitation internship in which an experienced facilitator is present in the  
37 room during the group session.

38 (B) Observation by a trainer of the trainee conducting a group session via a one-  
39 way mirror.

40 (C) Observation by a trainer of the trainee conducting a group session via a  
41 video or audio ~~tape~~ recording.

1 (D) Consultation and or supervision twice a week in a six-month program or  
2 once a week in a 52-week program.

3 (3) An experienced facilitator is one who has the following qualifications:

4 (A) Documentation on file, approved by the agency, evidencing that the  
5 experienced facilitator has the skills needed to provide quality supervision and  
6 training.

7 (B) Documented experience working with batterers for three years, and a  
8 minimum of two years working with batterer's groups.

9 (C) Documentation by January 1, 2003, of coursework or equivalent training  
10 that demonstrates satisfactory completion of the 40-hour basic-core training.

11 (b) A facilitator of a batterers' intervention program shall complete, as a  
12 minimum continuing education requirement, 16 hours annually of continuing  
13 education in either domestic violence or a related field with a minimum of 8 hours  
14 in domestic violence.

15 (c) A person or agency with a specific hardship may request the probation  
16 department, in writing, for an extension of time to complete the training or to  
17 complete alternative training options.

18 (d)(1) An experienced facilitator, as defined in paragraph (3) of subdivision (a),  
19 is not subject to the supervision requirements of this section, if they meet the  
20 requirements of subparagraph (C) of paragraph (3) of subdivision (a).

21 (2) This section does not apply to a person who provides batterers' treatment  
22 through a jail education program if the person in charge of that program  
23 determines that such person has adequate education or training in domestic  
24 violence or a related field.

25 (e) A person who satisfactorily completes the training requirements of a county  
26 probation department whose training program is equivalent to or exceeds the  
27 training requirements of this act shall be exempt from the training requirements of  
28 this act.

29 **Comment.** Subdivision (a)(2)(C) of Section 1203.098 is amended to reflect advances in  
30 recording technology and for consistency of terminology. For a similar reform, see 2002 Cal.  
31 Stat. ch. 1068 (replacing numerous references to "audiotape" in Civil Discovery Act with either  
32 "audio technology," "audio recording," or "audio record," as context required).

33 **Penal Code § 1346 (amended). Recording of testimony of minor or developmentally**  
34 **disabled victim**

35 SEC. \_\_\_\_\_. Section 1346 of the Penal Code is amended to read:

36 1346. (a) When a defendant has been charged with a violation of Section 220,  
37 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6,  
38 where the victim either is a person 15 years of age or less or is developmentally  
39 disabled as a result of mental retardation, as specified in subdivision (a) of Section  
40 4512 of the Welfare and Institutions Code, the people may apply for an order that  
41 the victim's testimony at the preliminary hearing, in addition to being  
42 stenographically recorded, be video recorded and preserved ~~on videotape~~.



1 (b) The application for the order shall be in writing and made three days prior to  
2 the preliminary hearing.

3 (c) Upon timely receipt of the application, the magistrate shall order that the  
4 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded  
5 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to  
6 the clerk of the court in which the action is pending.

7 (d) If at the time of trial the court finds that further testimony would cause the  
8 victim emotional trauma so that the victim is medically unavailable or otherwise  
9 unavailable within the meaning of Section 240 of the Evidence Code, the court  
10 may admit the ~~videotape~~ video recording of the victim's testimony at the  
11 preliminary hearing as former testimony under Section 1291 of the Evidence  
12 Code.

13 (e) Any ~~videotape which is taken~~ video recording made pursuant to this section  
14 is subject to a protective order of the court for the purpose of protecting the  
15 privacy of the victim. This subdivision does not affect the provisions of  
16 subdivision (b) of Section 868.7.

17 (f) Any ~~videotape~~ video recording made pursuant to this section shall be made  
18 available to the prosecuting attorney, the defendant, and his or her attorney for  
19 viewing during ordinary business hours. Any ~~videotape~~ video recording which is  
20 made available pursuant to this section is subject to a protective order of the court  
21 for the purpose of protecting the privacy of the victim.

22 (g) The ~~tape~~ video recording shall be destroyed after five years have elapsed  
23 from the date of entry of judgment; provided, however, that if an appeal is filed,  
24 the ~~tape~~ video recording shall not be destroyed until a final judgment on appeal  
25 has been rendered.

26 **Comment.** Section 1346 is amended to reflect advances in recording technology and for  
27 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
28 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"  
29 "audio recording," or "audio record," as context required).

30 **Note.** The Commission invites comment from the Attorney General, criminal law  
31 practitioners, and any other interested persons on whether allowing the recording authorized by  
32 this section by means of technology that does not use videotape would cause any problems  
33 relating to the privacy concerns of a testifying victim.

34 **Penal Code § 1346.1 (amended). Recording of testimony of victim of spousal rape or**  
35 **infliction of corporal injury**

36 SEC. \_\_\_\_\_. Section 1346.1 of the Penal Code is amended to read:

37 1346.1. (a) When a defendant has been charged with a violation of Section 262  
38 or subdivision (a) of Section 273.5, the people may apply for an order that the  
39 victim's testimony at the preliminary hearing, in addition to being  
40 stenographically recorded, be video recorded and preserved ~~on videotape~~.

41 (b) The application for the order shall be in writing and made three days prior to  
42 the preliminary hearing.

1 (c) Upon timely receipt of the application, the magistrate shall order that the  
2 testimony of the victim given at the preliminary hearing be ~~taken~~ video recorded  
3 and preserved ~~on videotape~~. The ~~videotape~~ video recording shall be transmitted to  
4 the clerk of the court in which the action is pending.

5 (d) If the victim's prior testimony given at the preliminary hearing is admissible  
6 pursuant to the Evidence Code, then the ~~videotape recording~~ video recording of  
7 that testimony may be introduced as evidence at trial.

8 **Comment.** Section 1346.1 is amended to reflect advances in recording technology and for  
9 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
10 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"  
11 "audio recording," or "audio record," as context required).

12 **Note.** The Commission invites comment from the Attorney General, criminal law  
13 practitioners, and any other interested persons on whether allowing the recording authorized by  
14 this section by means of technology that does not use videotape would cause any problems  
15 relating to the privacy concerns of a testifying victim.

16 **Penal Code § 1347 (amended). Testimony of minors**

17 SEC. \_\_\_\_\_. Section 1347 of the Penal Code is amended to read:

18 1347. (a) It is the intent of the Legislature in enacting this section to provide the  
19 court with discretion to employ alternative court procedures to protect the rights of  
20 a child witness, the rights of the defendant, and the integrity of the judicial  
21 process. In exercising its discretion, the court necessarily will be required to  
22 balance the rights of the defendant or defendants against the need to protect a child  
23 witness and to preserve the integrity of the court's truthfinding function. This  
24 discretion is intended to be used selectively when the facts and circumstances in  
25 the individual case present compelling evidence of the need to use these  
26 alternative procedures.

27 (b) Notwithstanding any other law, the court in any criminal proceeding, upon  
28 written notice by the prosecutor made at least three days prior to the date of the  
29 preliminary hearing or trial date on which the testimony of the minor is scheduled,  
30 or during the course of the proceeding on the court's own motion, may order that  
31 the testimony of a minor 13 years of age or younger at the time of the motion be  
32 taken by contemporaneous examination and cross-examination in another place  
33 and out of the presence of the judge, jury, defendant or defendants, and attorneys,  
34 and communicated to the courtroom by means of closed-circuit television, if the  
35 court makes all of the following findings:

36 (1) The minor's testimony will involve a recitation of the facts of any of the  
37 following:

38 (A) An alleged sexual offense committed on or with the minor.

39 (B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of  
40 which the minor is a victim.

41 (C) An alleged felony offense specified in Section 273a or 273d of which the  
42 minor is a victim.

1 (2) The impact on the minor of one or more of the factors enumerated in  
2 subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to  
3 be so substantial as to make the minor unavailable as a witness unless closed-  
4 circuit testimony is used.

5 (A) Testimony by the minor in the presence of the defendant would result in the  
6 child suffering serious emotional distress so that the child would be unavailable as  
7 a witness.

8 (B) The defendant used a deadly weapon in the commission of the offense.

9 (C) The defendant threatened serious bodily injury to the child or the child's  
10 family, threatened incarceration or deportation of the child or a member of the  
11 child's family, threatened removal of the child from the child's family, or  
12 threatened the dissolution of the child's family in order to prevent or dissuade the  
13 minor from attending or giving testimony at any trial or court proceeding, or to  
14 prevent the minor from reporting the alleged sexual offense, or from assisting in  
15 criminal prosecution.

16 (D) The defendant inflicted great bodily injury upon the child in the commission  
17 of the offense.

18 (E) The defendant or his or her counsel behaved during the hearing or trial in a  
19 way that caused the minor to be unable to continue his or her testimony.

20 In making the determination required by this section, the court shall consider the  
21 age of the minor, the relationship between the minor and the defendant or  
22 defendants, any handicap or disability of the minor, and the nature of the acts  
23 charged. The minor's refusal to testify shall not alone constitute sufficient  
24 evidence that the special procedure described in this section is necessary to obtain  
25 the minor's testimony.

26 (3) The equipment available for use of closed-circuit television would accurately  
27 communicate the image and demeanor of the minor to the judge, jury, defendant  
28 or defendants, and attorneys.

29 (c) If the court orders the use of closed-circuit television, two-way closed-circuit  
30 television shall be used, except that if the impact on the minor of one or more of  
31 the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of  
32 subdivision (b), is shown by clear and convincing evidence to be so substantial as  
33 to make the minor unavailable as a witness even if two-way closed-circuit  
34 television is used, one-way closed-circuit television may be used. The prosecution  
35 shall give the defendant or defendants at least 30 days' written notice of the  
36 prosecution's intent to seek the use of one-way closed-circuit television, unless  
37 good cause is shown to the court why this 30-day notice requirement should not  
38 apply.

39 (d)(1) The hearing on a motion brought pursuant to this section shall be  
40 conducted out of the presence of the jury.

41 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the  
42 court, in determining the merits of the motion, shall not compel the minor to

1 testify at the hearing; nor shall the court deny the motion on the ground that the  
2 minor has not testified.

3 (3) In determining whether the impact on an individual child of one or more of  
4 the five factors enumerated in paragraph (2) of subdivision (b) is so substantial  
5 that the minor is unavailable as a witness unless two-way or one-way closed-  
6 circuit television is used, the court may question the minor in chambers, or at some  
7 other comfortable place other than the courtroom, on the record for a reasonable  
8 period of time with the support person, the prosecutor, and defense counsel  
9 present. The defendant or defendants shall not be present. The court shall conduct  
10 the questioning of the minor and shall not permit the prosecutor or defense counsel  
11 to examine the minor. The prosecutor and defense counsel shall be permitted to  
12 submit proposed questions to the court prior to the session in chambers. Defense  
13 counsel shall be afforded a reasonable opportunity to consult with the defendant or  
14 defendants prior to the conclusion of the session in chambers.

15 (e) When the court orders the testimony of a minor to be taken in another place  
16 outside of the courtroom, the court shall do all of the following:

17 (1) Make a brief statement on the record, outside of the presence of the jury, of  
18 the reasons in support of its order. While the statement need not include traditional  
19 findings of fact, the reasons shall be set forth with sufficient specificity to permit  
20 meaningful review and to demonstrate that discretion was exercised in a careful,  
21 reasonable, and equitable manner.

22 (2) Instruct the members of the jury that they are to draw no inferences from the  
23 use of closed-circuit television as a means of facilitating the testimony of the  
24 minor.

25 (3) Instruct respective counsel, outside of the presence of the jury, that they are  
26 to make no comment during the course of the trial on the use of closed-circuit  
27 television procedures.

28 (4) Instruct the support witness, outside of the presence of the jury, that he or  
29 she is not to coach, cue, or in any way influence or attempt to influence the  
30 testimony of the minor.

31 (5) Order that a complete record of the examination of the minor, including the  
32 images and voices of all persons who in any way participate in the examination, be  
33 made video recorded and preserved, ~~on videotape~~ in addition to being  
34 stenographically recorded. The ~~videotape~~ video recording shall be transmitted to  
35 the clerk of the court in which the action is pending and shall be made available  
36 for viewing to the prosecuting attorney, the defendant or defendants, and his or her  
37 attorney during ordinary business hours. The ~~videotape~~ video recording shall be  
38 destroyed after five years have elapsed from the date of entry of judgment. If an  
39 appeal is filed, the ~~tape~~ video recording shall not be destroyed until a final  
40 judgment on appeal has been ordered. Any ~~videotape that is taken~~ video recording  
41 made pursuant to this section is subject to a protective order of the court for the  
42 purpose of protecting the privacy of the witness. This subdivision does not affect  
43 the provisions of subdivision (b) of Section 868.7.

1 (f) When the court orders the testimony of a minor to be taken in another place  
2 outside the courtroom, only the minor, a support person designated pursuant to  
3 Section 868.5, a nonuniformed bailiff, any technicians necessary to operate the  
4 closed-circuit equipment, and, after consultation with the prosecution and the  
5 defense, a representative appointed by the court, shall be physically present for the  
6 testimony. ~~A videotape shall record~~ video recording shall be made of the image of  
7 the minor and his or her testimony, and a separate ~~videotape shall record~~ video  
8 recording shall be made of the image of the support person.

9 (g) When the court orders the testimony of a minor to be taken in another place  
10 outside the courtroom, the minor shall be brought into the judge's chambers prior  
11 to the taking of his or her testimony to meet for a reasonable period of time with  
12 the judge, the prosecutor, and defense counsel. A support person for the minor  
13 shall also be present. This meeting shall be for the purpose of explaining the court  
14 process to the child and to allow the attorneys an opportunity to establish rapport  
15 with the child to facilitate later questioning by closed-circuit television. No  
16 participant shall discuss the defendant or defendants or any of the facts of the case  
17 with the minor during this meeting.

18 (h) When the court orders the testimony of a minor to be taken in another place  
19 outside the courtroom, nothing in this section prohibits the court from ordering the  
20 minor to be brought into the courtroom for a limited purpose, including the  
21 identification of the defendant or defendants as the court deems necessary.

22 (i) The examination shall be under oath, and the defendant or defendants shall be  
23 able to see and hear the minor witness, and if two-way closed-circuit television is  
24 used, the defendant's image shall be transmitted live to the witness.

25 (j) Nothing in this section affects the disqualification of witnesses pursuant to  
26 Section 701 of the Evidence Code.

27 (k) The cost of examination by contemporaneous closed-circuit television  
28 ordered pursuant to this section shall be borne by the court out of its existing  
29 budget.

30 (l) Nothing in this section shall be construed to prohibit a defendant from being  
31 represented by counsel during any closed-circuit testimony.

32 **Comment.** Section 1347 is amended to reflect advances in recording technology and for  
33 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
34 numerous references to "audiotape" in Civil Discovery Act with either "audio technology,"  
35 "audio recording," or "audio record," as context required).

36 Section 1347 is also amended to correct a punctuation error.

37 **Note.** The Commission invites comment from the Attorney General, criminal law  
38 practitioners, and any other interested persons on whether allowing the recording authorized by  
39 this section by means of technology that does not use videotape would cause any problems  
40 relating to the privacy concerns of a testifying victim.

41 **Penal Code § 1347.5 (amended). Testimony of disabled victims**

42 SEC. \_\_\_\_\_. Section 1347.5 of the Penal Code is amended to read:

1 1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide  
2 the court with discretion to modify court procedures, as a reasonable  
3 accommodation, to assure that adults and children with disabilities who have been  
4 victims of an alleged sexual or otherwise specified offense are able to participate  
5 effectively in criminal proceedings. In exercising its discretion, the court shall  
6 balance the rights of the defendant against the right of the victim who has a  
7 disability to full access and participation in the proceedings, while preserving the  
8 integrity of the court's truthfinding function.

9 (1) For purposes of this section, the term "disability" is defined in paragraphs (1)  
10 and (2) of subdivision (c) of Section 11135 of the Government Code.

11 (2) The right of the victim is not to confront the perpetrator, but derives under  
12 both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the  
13 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) as  
14 a right to participate in or benefit from the same services or services that are equal  
15 or as effective as those enjoyed by persons without disabilities.

16 (b) Notwithstanding any other law, in any criminal proceeding in which the  
17 defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1,  
18 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314,  
19 Section 368, 647.6, or with any attempt to commit a crime listed in this  
20 subdivision, committed with or upon a person with a disability, the court in its  
21 discretion may make accommodations to support the person with a disability,  
22 including, but not limited to, any of the following:

23 (1) Allow the person with a disability reasonable periods of relief from  
24 examination and cross-examination during which he or she may retire from the  
25 courtroom. The judge may also allow other witnesses in the proceeding to be  
26 examined when the person with a disability retires from the courtroom.

27 (2) Allow the person with a disability to utilize a support person pursuant to  
28 Section 868.5 or a regional center representative providing services to a  
29 developmentally disabled individual pursuant to Article 1 (commencing with  
30 Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of  
31 Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of,  
32 allowing the person with a disability to utilize a support person or regional center  
33 representative pursuant to this paragraph, the court may allow the person with a  
34 disability to utilize a person necessary to facilitate the communication or physical  
35 needs of the person with a disability.

36 (3) Notwithstanding Section 68119 of the Government Code, the judge may  
37 remove his or her robe if the judge believes that this formal attire prevents full  
38 participation of the person with a disability because it is intimidating to him or her.

39 (4) The judge, parties, witnesses, support persons, and court personnel may be  
40 relocated within the courtroom to facilitate a more comfortable and personal  
41 environment for the person with a disability as well as accommodating any  
42 specific requirements for communication by that person.

1 (c) The prosecutor may apply for an order that the testimony of the person with  
2 a disability at the preliminary hearing, in addition to being stenographically  
3 recorded, be video recorded and preserved ~~on videotape~~.

4 (1) The application for the order shall be in writing and made three days prior to  
5 the preliminary hearing.

6 (2) Upon timely receipt of the application, the judge shall order that the  
7 testimony of the person with a disability given at the preliminary hearing be ~~taken~~  
8 video recorded and preserved ~~on videotape~~. The ~~videotape~~ video recording shall  
9 be transmitted to the clerk of the court in which the action is pending.

10 (3) If at the time of trial the court finds that further testimony would cause the  
11 person with a disability emotional trauma so that he or she is medically  
12 unavailable or otherwise unavailable within the meaning of Section 240 of the  
13 Evidence Code, the court may admit the ~~videotape~~ video recording of his or her  
14 testimony at the preliminary hearing as former testimony under Section 1291 of  
15 the Evidence Code.

16 (4) Any ~~videotape that is taken~~ video recording made pursuant to this  
17 subdivision is subject to a protective order of the court for the purpose of  
18 protecting the privacy of the person with a disability. This subdivision does not  
19 affect the provisions of subdivision (b) of Section 868.7.

20 (d) Notwithstanding any other law, the court in any criminal proceeding, upon  
21 written notice of the prosecutor made at least three days prior to the date of the  
22 preliminary hearing or trial date on which the testimony of the person with a  
23 disability is scheduled, or during the course of the proceeding on the court's own  
24 motion, may order that the testimony of the person with a disability be taken by  
25 contemporaneous examination and cross-examination in another place and out of  
26 the presence of the judge, jury, and defendant, and communicated to the  
27 courtroom by means of two-way closed-circuit television, if the court makes all of  
28 the following findings:

29 (1) The person with a disability will be called on to testify concerning facts of an  
30 alleged sexual offense, or other crime as specified in subdivision (b), committed  
31 on or with that person.

32 (2) The impact on the person with a disability of one or more of the factors  
33 enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and  
34 convincing evidence to be so substantial as to make the person with a disability  
35 unavailable as a witness unless closed-circuit television is used. The refusal of the  
36 person with a disability to testify shall not alone constitute sufficient evidence that  
37 the special procedure described in this subdivision is necessary in order to  
38 accommodate the disability. The court may take into consideration the relationship  
39 between the person with a disability and the defendant or defendants.

40 (A) Threats of serious bodily injury to be inflicted on the person with a disability  
41 or a family member, of incarceration, institutionalization, or deportation of the  
42 person with a disability or a family member, or of removal of the person with a  
43 disability from his or her residence by withholding needed services when the

1 threats come from a service provider, in order to prevent or dissuade the person  
2 with a disability from attending or giving testimony at any trial or court  
3 proceeding or to prevent that person from reporting the alleged offense or from  
4 assisting in criminal prosecution.

5 (B) Use of a firearm or any other deadly weapon during the commission of the  
6 crime.

7 (C) Infliction of great bodily injury upon the person with a disability during the  
8 commission of the crime.

9 (D) Conduct on the part of the defendant or defense counsel during the hearing  
10 or trial that causes the person with a disability to be unable to continue his or her  
11 testimony.

12 (e)(1) The hearing on the motion brought pursuant to this subdivision shall be  
13 conducted out of the presence of the jury.

14 (2) Notwithstanding Section 804 of the Evidence Code or any other law, the  
15 court, in determining the merits of the motion, shall not compel the person with a  
16 disability to testify at the hearing; nor shall the court deny the motion on the  
17 ground that the person with a disability has not testified.

18 (3) In determining whether the impact on an individual person with a disability  
19 of one or more of the factors enumerated under paragraph (2) of subdivision (d) is  
20 so substantial that the person is unavailable as a witness unless the closed-circuit  
21 television procedure is employed, the court may question the person with a  
22 disability in chambers, or at some other comfortable place other than the  
23 courtroom, on the record for a reasonable period of time with the support person  
24 described under paragraph (2) of subdivision (b), the prosecutor, and defense  
25 counsel present. At this time the court shall explain the process to the person with  
26 a disability. The defendant or defendants shall not be present; however, the  
27 defendant or defendants shall have the opportunity to contemporaneously observe  
28 the proceedings by closed-circuit television. Defense counsel shall be afforded a  
29 reasonable opportunity to consult with the defendant or defendants prior to the  
30 conclusion of the session in chambers.

31 (f) When the court orders the testimony of a victim who is a person with a  
32 disability to be taken in another place outside of the courtroom, the court shall do  
33 all of the following:

34 (1) Make a brief statement on the record, outside of the presence of the jury, of  
35 the reasons in support of its order. While the statement need not include traditional  
36 findings of fact, the reasons shall be set forth with sufficient specificity to permit  
37 meaningful review and to demonstrate that discretion was exercised in a careful,  
38 reasonable, and equitable manner.

39 (2) Instruct the members of the jury that they are to draw no inferences from the  
40 use of closed-circuit television as a means of assuring the full participation of the  
41 victim who is a person with a disability by accommodating that individual's  
42 disability.



1 (3) Instruct respective counsel, outside of the presence of the jury, that they are  
2 to make no comment during the course of the trial on the use of closed-circuit  
3 television procedures.

4 (4) Instruct the support person, if the person is part of the court's  
5 accommodation of the disability, outside of the presence of the jury, that he or she  
6 is not to coach, cue, or in any way influence or attempt to influence the testimony  
7 of the person with a disability.

8 (5) Order that a complete record of the examination of the person with a  
9 disability, including the images and voices of all persons who in any way  
10 participate in the examination, be made and preserved ~~on videotape~~ by video  
11 recording in addition to being stenographically recorded. The ~~videotape~~ video  
12 recording shall be transmitted to the clerk of the court in which the action is  
13 pending and shall be made available for viewing to the prosecuting attorney, the  
14 defendant, and his or her attorney, during ordinary business hours. The ~~videotape~~  
15 video recording shall be destroyed after five years have elapsed from the date of  
16 entry of judgment. If an appeal is filed, the ~~tape~~ video recording shall not be  
17 destroyed until a final judgment on appeal has been ordered. Any ~~videotape that is~~  
18 ~~taken~~ video recording made pursuant to this section is subject to a protective order  
19 of the court for the purpose of protecting the privacy of the person with a  
20 disability. This subdivision does not affect the provisions of subdivision (b) of  
21 Section 868.7.

22 (g) When the court orders the testimony of a victim who is a person with a  
23 disability to be taken in another place outside the courtroom, nothing in this  
24 section shall prohibit the court from ordering the victim to appear in the courtroom  
25 for a limited purpose, including the identification of the defendant or defendants as  
26 the court deems necessary.

27 (h) The examination shall be under oath, and the defendant shall be able to see  
28 and hear the person with a disability. If two-way closed-circuit television is used,  
29 the defendant's image shall be transmitted live to the person with a disability.

30 (i) Nothing in this section shall affect the disqualification of witnesses pursuant  
31 to Section 701 of the Evidence Code.

32 (j) The cost of examination by contemporaneous closed-circuit television  
33 ordered pursuant to this section shall be borne by the court out of its existing  
34 budget.

35 (k) This section shall not be construed to obviate the need to provide other  
36 accommodations necessary to ensure accessibility of courtrooms to persons with  
37 disabilities nor prescribe a lesser standard of accessibility or usability for persons  
38 with disabilities than that provided by Title II of the Americans with Disabilities  
39 Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal regulations adopted  
40 pursuant to that act.

41 (l) The Judicial Council shall report to the Legislature, no later than two years  
42 after the enactment of this subdivision, on the frequency of the use and

1 effectiveness of admitting the ~~videotape~~ video recording of testimony by means of  
2 closed-circuit television.

3 **Comment.** Section 1347.5 is amended to reflect advances in recording technology and for  
4 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
5 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
6 “audio recording,” or “audio record,” as context required).

7 **Note.** The Commission invites comment from the Attorney General, criminal law  
8 practitioners, and any other interested persons on whether allowing the recording authorized by  
9 this section by means of technology that does not use videotape would cause any problems  
10 relating to the privacy concerns of a testifying victim.

11 **Penal Code § 3043 (amended). Hearing relating to parole suitability or setting of parole date**

12 SEC. \_\_\_\_\_. Section 3043 of the Penal Code is amended to read:

13 3043. (a) Upon request, notice of any hearing to review or consider the parole  
14 suitability or the setting of a parole date for any prisoner in a state prison shall be  
15 sent by the Board of Prison Terms at least 30 days before the hearing to any victim  
16 of a crime committed by the prisoner, or to the next of kin of the victim if the  
17 victim has died. The requesting party shall keep the board apprised of his or her  
18 current mailing address.

19 (b) The victim, next of kin, two members of the victim’s immediate family, or  
20 two representatives designated for a particular hearing by the victim or, in the  
21 event the victim is deceased or incapacitated, by the next of kin in writing prior to  
22 the hearing have the right to appear, personally or by counsel, at the hearing and to  
23 adequately and reasonably express his, her, or their views concerning the crime  
24 and the person responsible, except that any statement provided by a representative  
25 designated by the victim or next of kin shall be limited to comments concerning  
26 the effect of the crime on the victim.

27 (c) A representative designated by the victim or the victim’s next of kin for  
28 purposes of this section must be either a family or household member of the  
29 victim. The board may not permit a representative designated by the victim or the  
30 victim’s next of kin to provide testimony at a hearing, or to submit a statement to  
31 be included in the hearing as provided in Section 3043.2, if the victim, next of kin,  
32 or a member of the victim’s immediate family is present at the hearing, or if the  
33 victim, next of kin, or a member of the victim’s immediate family has submitted a  
34 statement as described in Section 3043.2.

35 (d) Nothing in this section is intended to allow the board to permit a victim’s  
36 representative to attend a particular hearing if the victim, next of kin, or a member  
37 of the victim’s immediate family is present at any hearing covered in this section,  
38 or if the victim, next of kin, or member of the victim’s immediate family has  
39 submitted a written, ~~audiotaped~~ audio recorded, or ~~videotaped~~ video recorded  
40 statement.

41 (e) The board, in deciding whether to release the person on parole, shall consider  
42 the statements of the victim or victims, next of kin, immediate family members of  
43 the victim, and the designated representatives of the victim or next of kin, if

1 applicable, made pursuant to this section and shall include in its report a statement  
2 of whether the person would pose a threat to public safety if released on parole.

3 In those cases where there are more than two immediate family members of the  
4 victim who wish to attend any hearing covered in this section, the board may, in  
5 its discretion, allow attendance of additional immediate family members or limit  
6 attendance to the following order of preference: spouse, children, parents, siblings,  
7 grandchildren, and grandparents.

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

12 **Comment.** Subdivision (d) of Section 3043 is amended to reflect advances in recording  
13 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
14 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
15 technology,” “audio recording,” or “audio record,” as context required).

## 16 PUBLIC RESOURCES CODE

### 17 **Pub. Res. Code § 4423.1 (amended). Suspension, restriction, or prohibition of permit** 18 **burning**

19 SEC. \_\_\_\_\_. Section 4423.1 of the Public Resources Code is amended to read:

20 4423.1. Burning under permit by any person on public or private lands, except  
21 within incorporated cities, may be suspended, restricted, or otherwise prohibited  
22 by proclamation. Any of the following public officers may issue a proclamation,  
23 which shall be applicable within their respective jurisdictions:

24 (a) The director or his or her designee.

25 (b) Any county fire warden with the approval of the director.

26 (c) The federal officers directing activities within California of the United States  
27 Bureau of Land Management, the National Park Service, and the United States  
28 Forest Service.

29 The proclamation may be issued when, in the judgment of the issuing public  
30 official, the menace of destruction by fire to life, improved property, or natural  
31 resources is, or is forecast to become, extreme due to critical fire weather, fire  
32 suppression forces being heavily committed to control fires already burning, acute  
33 dryness of the vegetation, or other factors that may cause the rapid spread of fire.  
34 A proclamation is effective on issuance or at a time specified therein and shall  
35 remain in effect until a proclamation removing the suspension, restriction, or  
36 prohibition is issued. The proclamation may be effective for a single day or longer.  
37 The proclamation shall declare the conditions that necessitate its issuance,  
38 designate the geographic area to which it applies, require that all or specified  
39 burning under permit be suspended, restricted, or prohibited until the conditions  
40 necessitating the proclamation abate, and identify the public official issuing the

1 proclamation. The proclamation may be in the form of a verbal or ~~tape-recorded~~  
2 audio recorded telephone message, a press release, or a posted order.

3 The proclamation may be issued without complying with Chapter 3.5  
4 (commencing with Section 11340) and Chapter 5 (commencing with Section  
5 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

6 **Comment.** Subdivision (c) of Section 4423.1 is amended to reflect advances in recording  
7 technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068  
8 (replacing numerous references to “audiotape” in Civil Discovery Act with either “audio  
9 technology,” “audio recording,” or “audio record,” as context required).

## 10 REVENUE AND TAXATION CODE

### 11 **Rev. & Tax Code § 1611 (amended). Record of hearing**

12 SEC. \_\_\_\_\_. Section 1611 of the Revenue and Taxation Code is amended to read:

13 1611. The county board shall make a record of the hearing and, upon request,  
14 shall furnish the party with ~~a tape~~ an audio recording or a transcript thereof at his  
15 expense. Request for ~~a tape~~ an audio recording or a transcript may be made at any  
16 time, but not later than 60 days following the final determination by the county  
17 board.

18 **Comment.** Section 1611 is amended to reflect advances in recording technology and for  
19 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
20 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
21 “audio recording,” or “audio record,” as context required).

## 22 WELFARE AND INSTITUTIONS CODE

### 23 **Welf. & Inst. Code § 19639 (amended). Rules and regulations**

24 SEC. \_\_\_\_\_. Section 19639 of the Welfare and Institutions Code is amended to  
25 read:

26 19639. (a) The director shall adopt and promulgate necessary rules and  
27 regulations, in compliance with Chapter 3.5 (commencing with Section 11340) of  
28 Part 1 of Division 3 of Title 2 of the Government Code, and do all things  
29 necessary and proper to carry out this article. The director shall review these  
30 regulations for possible revision at least every three years.

31 (b) These regulations shall include, but not be limited to:

32 (1) Uniform procedures for vendor application and termination.

33 (2) Criteria and standards for selecting vendors and matching vendors to  
34 facilities which shall ensure that the most qualified person is selected for a facility.

35 (3) Equipment life standards and service standards for the inventory, repair, and  
36 purchase of equipment, as required under subdivision (a) of Section 19626.5.

37 (4) The minimum requirements for installation of a facility.

38 (5) A fair minimum of return to vendors.

39 (6) Standards for training, in-service retraining, and upward mobility.

1 (7) The policies and procedures used by the department for collection and  
2 deposit or disbursement of all vending facility income, including, but not limited  
3 to, the frequency, rules regarding, and method of collection of funds from facilities  
4 operated by licensed blind vendors and facilities operated by other individuals or  
5 entities.

6 (c) The director shall provide a written copy of all rules and regulations adopted  
7 pursuant to this section to all vendors. Upon request by a vendor, the rules and  
8 regulations shall be supplied to the vendor ~~on cassette tapes~~ in an audio recording  
9 in lieu of the written copy. In addition, the director shall notify all vendors of any  
10 proposed changes to the rules and regulations.

11 **Comment.** Section 19639 is amended to reflect advances in recording technology and for  
12 consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing  
13 numerous references to “audiotape” in Civil Discovery Act with either “audio technology,”  
14 “audio recording,” or “audio record,” as context required).