EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

In its order dated October 21, 2009, this Three-Judge Court rejected Defendants' September 18, 2009 Population Reduction Plan and ordered Defendants to submit a new population reduction plan that complies with the Three-Judge Court's August 4, 2009 Order. Specifically, Defendants were ordered to create a new plan that "provides for a reduction of the prison population to 137.5% of design capacity within two years." (Oct. 21, 2009 Order at 2:24-25.) In addition, the October 21, 2009 Order also requires Defendants to respond to several inquiries by the Court relating to: (1) the calculations with respect to Defendants' proposed population reduction measures included in the new plan; (2) the effect, if any, of the September 17, 2009 California Department of Corrections and Rehabilitation's (CDCR) reduced budget in rehabilitation programs; (3) measures the State will take to ensure public safety through reentry and diversionary programs; and (4) Governor Schwarzenegger's budget proposal submitted to the California State Legislature aimed at addressing California's historic budget deficit that could provide for a population reduction of up to 37,000 inmates.

As required by the Three-Judge Court's October 21, 2009 Order, Defendants submit the following documents:

1. Attached as Exhibit A is "State Defendants' November 12, 2009 Response to the Court's October 21, 2009 Order to Reduce Prison Population to 137.5% of Design Capacity" (Defendants' Response).
2. Attached as Exhibit B is the declaration of Jay Atkinson, Research Manager II for the Estimates and Statistical Analysis Section, Offender Information Services Branch, CDCR. Mr. Atkinson's declaration is responsive to the Three-Judge Court's first inquiry regarding the calculations through which Defendants obtained the estimates of the population reductions associated with the proposed actions in Defendants' Response.
3. Attached as Exhibit C is the declaration of David Lewis, Deputy Director, Fiscal Services for CDCR. Mr. Lewis's declaration is similarly responsive

to the Three-Judge Court's first inquiry regarding the calculations through which Defendants obtained the estimates of the population reductions associated with the proposed actions in Defendants' Response. Mr. Lewis's declaration is also responsive to the Three-Judge Court's second inquiry regarding whether the September 17, 2009 CDCR budget reduction of $250 million in rehabilitation programs will affect any estimated reductions included in Defendants' Response, to the extent Defendants' Response relies on rehabilitation programs. Lastly, Mr. Lewis's declaration is responsive to the Three-Judge Court's fourth inquiry regarding Governor Schwarzenegger's budget proposal previously submitted to the California Legislature that called for a reduction of up to 37,000 inmates over a two-year period aimed at addressing California's historic budget deficit.

4. Attached as Exhibit D is the declaration of Scott Kernan, Undersecretary of Operations for CDCR. Mr. Kernan's declaration is responsive to the Three-Judge Court's first inquiry regarding the calculations through which Defendants obtained the estimates of the population reductions associated with the proposed actions in Defendants' Response.

5. Attached as Exhibit E is the declaration of Sharon Aungst, Chief Deputy Secretary of the Division of Correctional Health Care Services for CDCR. Ms. Aungst's declaration is responsive to the Three-Judge Court's second inquiry regarding all budget reductions, announced or implemented in 2009, that affect CDCR's provision of medical or mental health services and otherwise affect the size of the inmate population.

6. Attached as Exhibit F is the declaration of Robert Ambroselli, Acting Director, Division of Adult Parole Operations for CDCR. Mr. Ambroselli's declaration is responsive to the Three-Judge Court's third inquiry regarding the specific measures that the State will take to ensure public safety through reentry and diversionary programs, including a catalogue of

current programs.

7. Attached as Exhibit G is the declaration of Elizabeth Siggins, Acting Chief Deputy for Adult Programs, CDCR. Ms. Siggins's declaration is similarly responsive to the Three-Judge Court's third inquiry regarding the measures that the State is taking to support and assist counties and other community-level providers of rehabilitation and reentry programs and of any steps it will take or has taken to increase, reduce, or eliminate support or assistance.

The submission of the attached Defendants' Response and declarations, as required by the Three-Judge Court's October 21, 2009 Order, is not an admission that this Court's order meets the requirements of the Prison Litigation Reform Act (PLRA). Nor is the submission of the attached documents an admission that Defendants' September 18, 2009 Population Reduction Plan was not in compliance with this Court's August 4, 2009 Order.

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As will be argued in the U.S. Supreme Court, the Three-Judge Court erred in its rulings and orders. Thus, the submission of these attachments, including Defendants' Response, does not constitute waiver of any issue previously raised before this Court and which may be raised in the U.S. Supreme Court, including, but not limited to, whether the Three-Judge Court was properly convened; whether the Three-Judge Court misconstrued the PLRA's requirement that crowding is the primary cause of the violation of a federal right; whether the population cap of 137.5% of design capacity satisfies PLRA's "least intrusive" and "narrowly drawn" requirements; and whether the Three-Judge Court improperly refused to permit the State from introducing evidence "relevant only to determining whether the constitutional violations found by the *Plata* and *Coleman* courts were 'current and ongoing.'" (Aug. 4, 2009 Opinion and Order, at 54 fn. 42.)

DATED: November 12, 2009

HANSON BRIDGETT LLP

By: /s/ Paul B. Mello
PAUL B. MELLO
Attorneys for Defendants
Arnold Schwarzenegger, et al.

DATED: November 12, 2009

EDMUND G. BROWN JR.
Attorney General of the State of California

By: /s/ Kyle Lewis
KYLE LEWIS
Deputy Attorney General
Attorneys for Defendants
Arnold Schwarzenegger, et al.

EXHIBIT A

STATE OF CALIFORNIA —DEPARTMENT OF CORRECTIONS AND REHABILITATION ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF LEGAL AFFAIRS
Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001

November 12, 2009

Mr. Paul Mello
Hanson Bridgett LLP
425 Market Street
San Francisco, CA 94244-2550

Dear Mr. Mello:

Attached please find Defendants' response to the October 21, 2009, Three-Judge Court Order.

Sincerely,

BENJAMIN T. RICE
General Counsel, Office of Legal Affairs
California Department of Corrections and Rehabilitation

Attachments

STATE DEFENDANTS' NOVEMBER 12, 2009 RESPONSE TO THE THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER TO REDUCE PRISON POPULATION TO 137.5% OF DESIGN CAPACITY

BACKGROUND AND SUMMARY OF RESPONSE

On August 4, 2009, this Court ordered the State to produce a prisoner reduction plan that would, within two years, reduce the State's prison population to 137.5% of design capacity – i.e., a reduction of more than 40,000 prisoners over a two-year period.[1] Defendants subsequently presented the Three-Judge Court with a plan to safely reduce the State's prison population over time. It did not achieve the prisoner reduction that the Court desired on the timeframe the Court ordered, because the State's plan (the September 18, 2009 Plan) reflected the State's goal to implement long-term prison reform that enhanced public safety and reduced the prison population. Although the State's plan significantly reduced the prison population over time while the number of State prisoners was projected to increase, to be sure, this plan was not designed as a short-term fix for prison crowding. But the Court rejected the State's plan and ordered the State to present a new plan that, "most important, provides for a reduction of the prison population to 137.5% of design capacity within two years."

Without waiving any appellate rights, conceding the appropriateness of the Three-Judge Court's prior rulings and findings, or admitting that the prisoner release order issued by the Three-Judge Court can be implemented without substantially adversely impacting public safety and the operation of the criminal justice system, Defendants submit this Response as required by the Three-Judge Court's October 21, 2009 order to meet the court-selected population figure of 137.5% of design capacity for California's prisons by the end of 2011.

In this Response to the Three-Judge Court's October 21, 2009 order, Defendants continue to propose the following items from their September 18, 2009 Plan, for which they already had the authority through legislation or executive or administrative powers:

1. Pre-Custody Reforms: California Community Corrections Performance Incentives Act of 2009.

2. In-Custody Reforms: Credit-Earning Enhancements.

3. Parole Reforms: (a) "Summary Parole;" (b) Parole Violation Decision Making Instrument; and (c) Reentry Courts.

4. Administrative Changes: (a) California Out-of-State Correctional Facility Expansion; (b) Community Correctional Facilities Utilization; (c) Commutations of Sentences;

[1] Based on the evidence at the time of trial, the Three-Judge Court estimates the prisoner reduction to be approximately 46,000 inmates. Because the actual prison population fluctuates over time, the estimated reduction does as well.

(d) Discharge of Deported Parolees; and (e) Alternative Sanctions for Violations of Parole.

5. Increased capacity through construction of new infill projects, healthcare projects, conversion of former Division of Juvenile Justice sites, and reentry projects.

Several of the reforms identified above were recently enacted by the State's executive and legislative branches. Moreover, the Defendants committed in their September 18, 2009 Plan, and remain committed now, to seeking additional State law changes through the State Legislature. Nonetheless, in rejecting the State's September 18, 2009 Plan, the Court ordered the State to identify State laws that limit the Defendants' ability to implement population reduction measures, and suggested that it might waive State laws to achieve the reduction it desires. Although the Defendants have complied with the Court's order, they do not believe it is appropriate for this federal Court to waive State laws. However, the prisoner reduction that this Court seeks – a reduction of more than 40,000 prisoners in two years – can only be accomplished if the State Legislature enacts new laws and/or this Court orders changes to State laws, as discussed in this Response. Thus, Defendants present the following proposals to reach the court-ordered population figure of 137.5% of design capacity within two years. Some of these proposals were included in the September 18, 2009 Plan, but the State Defendants had no ability to implement them at that time absent additional legislation or court orders:

1. Additional inmates housed in out-of-state facilities.

2. Changing of property crime thresholds.

3. Establishing alternate custody options for low-risk offenders.

4. Accelerating construction projects under AB 900.

5. Additional use of private in-state facilities.

6. County jail time for enumerated felonies.

The following discussion contains two sections: (1) a section discussing the proposals from the September 18, 2009 Plan that require no additional legislation or court orders; and (2) a section discussing the additional proposals, some of which were originally included in the September 18, 2009 Plan, that require either legislation or court orders to accomplish. The Table at the end of this Response sets forth the population reduction figures in six-month increments as required by the Three-Judge Court's order. In general, these estimates represent CDCR's best effort to project future impacts to a population that is dynamic and will change in ways that are not known today. Submitted concurrently with this Response are declarations addressing the Court's questions posed in its October 21, 2009 Order.

SECTION ONE

PROPOSALS FROM THE SEPTEMBER 18, 2009 PLAN THAT REQUIRE NO ADDITIONAL LEGISLATION OR COURT ORDERS TO IMPLEMENT

Defendants maintain that the September 18, 2009 Plan is the most effective way to safely and responsibly reduce its population and the elements of that plan are the foundation for this Response. Below, Defendants summarize the proposals of the September 18, 2009 Plan and address the questions from the Three-Judge Court's October 21, 2009 order. (Other answers are in the concurrently-filed declarations.) Specifically, this Court directed Defendants to set forth effective dates and to estimate reductions in population expected after six, twelve, eighteen, and twenty-four months after implementation. (Oct. 21, 2009 Order at 2:25-28.) Also, this Court ordered Defendants to "(1) explain the calculations through which they obtained the estimates of the population reductions associated with each action that they propose; (2) identify the assumptions underlying those calculations; and (3) explain why those assumptions are reasonable." (*Id.* 3:2-5.)

To respond to the Three-Judge Court, Defendants submit a Table that estimates the impact of the proposals in six month increments. As demonstrated in the Table, there will be a period of time during which Defendants will ramp up the programs and therefore it appears as though there is a delayed realization of the population reduction.

For each eligible number, in generating estimates of the impact on the reduction in average daily population (ADP), Defendants generated estimates based on eligible populations and factored in a ramp-up period, overlap with other programs, etc., in an attempt to obtain the most reasonable and reliable population reduction estimates. For the population reduction measures, CDCR chose to conservatively estimate the impact in order to pick the most reliable and achievable numbers. (*See* generally Decl. of Jay Atkinson describing the methodology employed by CDCR in calculating its population reduction estimates, filed concurrently.)

I.

LEGISLATIVE AND ADMINISTRATIVE REFORMS

A. PRE-CUSTODY REFORMS: California Community Corrections Performance Incentives Act of 2009

The recent passage of Senate Bill 18 (SB 18)[2] creates a system of rewards for probation success by establishing the California Community Corrections Performance Incentives Act of 2009. The community corrections program created by this act will authorize counties to receive funding for implementing and expanding evidence-based programs for felony probationers. Counties will be required to track specific probation outcomes and, depending on the success of those outcomes, may be eligible for "probation failure reduction incentive payments" or "high

[2] Sen. Bill No. 18 (2009 3d Ex. Sess.). The third extraordinary legislative session ended on October 26, 2009. These proposals become law and operative on January 25, 2010.

performance grants." The new funding model created by SB 18 will sustain funding for improved, evidence-based probation supervision practices. By incentivizing probation success, California will lower the number of probationers sent to prison each year.

Defendants estimate this program will net an approximate 1,915 reduction in CDCR's ADP by December 31, 2011. Defendants were able to estimate this reduction by utilizing information in CDCR's Offender Information Services Branch's (OISB) data warehouse. CDCR's OISB compiles and retains summary statistical information about inmates and parolees. The OISB data reflected that CDCR receives approximately 19,150 new admissions as a result of felony probation revocations in a calendar year. CDCR then made the assumption that the average return for revocation was one year and took the conservative estimate that this program would have a ten percent success rate.

B. IN-CUSTODY REFORMS: Credit Earning Enhancements

The passage of SB 18 also provides a number of credit earning enhancements. First, it provides one day of sentence credit for every day served in county jail from the time of sentencing. Prior to the passage of SB 18, the law provided one day of credit for every two days served in county jail. Second, it provides eligible inmates up to six weeks of credit per year for completion of approved programs. This approach to incentivizing good behavior for program completions has been suggested by several experts, including in the Expert Panel Report. Third, it provides that all parole violators returned to custody who are otherwise eligible should receive one day of credit for each day served. Prior to the new law, only some violators received such credit. Fourth, it provides two days of credit for every one day served once the inmate is endorsed to transfer to a fire camp, rather than providing such credit only after the inmate actually participates in the camp. Finally, it provides a consistent rule of one day of credit for every day served for all eligible inmates, whether those inmates are on a waiting list for a full-time assignment, participating in college, or undergoing reception center processing, so long as the inmate is discipline-free during that time. Previously, the law provided a similar credit structure, but did so through the existence, for example, of a "bridging program," whereby inmates in reception centers sign up for self-study programs and receive credit. This legislation makes credit earning consistent while obviating the need for a bridging program.

Defendants estimate this program will net an approximate 2,921 reduction in CDCR's ADP by December 31, 2011. The reduction in ADP for this proposal at the six, twelve, eighteen and twenty-four month mark can be found on Table 1. Defendants estimated the ADP reduction for this legislation by utilizing data at CDCR's OISB. CDCR has a simulation model that is used to create population projections for the future. This particular proposal is one that can use the simulation model to determine a net effect on the population on a month by month basis. Insofar as this proposal overlaps the proposal to house individuals in county jail who are convicted of certain enumerated offenses, CDCR discounted the reduction from this proposal by 15%.

C. PAROLE REFORMS

1. "Summary Parole"

The enactment of SB 18 creates a new program of "summary parole" whereby CDCR is prohibited from returning to prison, placing a parole hold, or reporting to the Board of Parole Hearings, any parolee who meets all of the following conditions: (1) is not a sex offender;[3] (2) has not been committed to prison for a sexually violent offense;[4] (3) has no prior conviction for a sexually violent offense; (4) has no instant or prior convictions that are violent[5] or serious;[6] (5) has not been found guilty of a serious disciplinary offense as defined by CDCR during his or her current term of imprisonment; (6) is not a validated prison gang member or associate, as defined in CDCR regulations; (7) has not refused to sign any written notification of parole requirements or conditions; and (8) has not been determined to pose a high risk to reoffend pursuant to a validated risk assessment tool.[7] Other offenders will be subject to traditional parole supervision upon release from prison.

Defendants anticipate that "summary parole" will reduce CDCR's institutional population because, when fully implemented, CDCR will be precluded from revoking parole and returning low risk parolees to prison for parole violations.

Defendants estimate this program will net an approximate 4,556 reduction in CDCR's ADP by December 2011. Defendants estimated the 4,556 reduction in ADP by first identifying the total number of adult parolees in 2008 that were non-serious, non-violent, non-sex offenders, with no prior serious or violent offenses, which was converted to a percentage and applied to the Spring 2009 Population Projections number of parolees to give an updated number of applicable parolees. Then using data from OISB, the percentage of this population that were low and moderate risk were applied to estimate the applicable parole population. Then it was assumed that a like percentage of the total number of parole violators who return to custody (PV-RTC) would not go to prison, and this determined the total expected prison ADP reduction. Then it was assumed that it would take approximately five months for the total impact of the ADP reduction to be realized so that was calculated to reduce the ADP in 2009-10. The 4,556 number is based on the best knowledge available at the time. Of course, actual implementation may vary from these numbers. Factors that could not be accounted for include: 1) crimes that do not show up on OBIS such as those committed in other states that may render an individual ineligible; and

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[3] California Penal Code, § 290, et seq. Subsequent references will be to the Penal Code unless otherwise noted.

[4] California Welfare and Institutions Code, section 6600(b).

[5] § 667.5 (c).

[6] § 1192.7 (c).

[7] CDCR intends to employ the California Static Risk Assessment tool, a validated tool that predicts an offender's risk to reoffend on the basis of static information received from CDCR and the California Department of Justice.

2) changes in local prosecutorial behavior resulting in some of these offenders coming to prison with a longer sentence as a parole violator with a new term (PV-WNT).

2. The Parole Violation Decision Making Instrument

Senate Bill 18 requires that CDCR employ a parole violation decision making instrument (PVDMI) to determine the most appropriate sanctions for parolees who violate conditions of parole. As stated in more detail in the September 18, 2009 Plan, the PVDMI is an effective tool in placing parolees in the right programs and returning the high risk parole violators to prisons thereby increasing public safety while decreasing recidivism.

At this time, CDCR does not have sufficient information upon which to base a reduction in population. However, the decision making instrument has produced uniform, policy driven responses to violations of parole. In this way, CDCR can effect a cultural change at the field level to afford security to field staff that the CDCR administration supports and encourages the use of interim sanctions in response to violations of parole. It is too early in its implementation to identify a drop in returns to custody at this time though CDCR is hopeful that it will begin to see the impact of this policy in the near future.

3. Reentry Courts

Senate Bill 18 also authorizes CDCR to collaborate with the California Administrative Office of the Courts to establish and expand drug and mental health reentry courts for parolees. These reentry courts will provide an option for parolees with drug and mental health needs to receive highly structured treatment in the community, under the close supervision of their parole agent and the court, rather than being returned to prison for violations that may be related to those needs. The legislation provides that for participating parolees, the court, with the assistance of the parolee's parole agent, "shall have exclusive authority to determine the appropriate conditions of parole, order rehabilitation and treatment services to be provided, determine appropriate incentives, order appropriate sanctions, lift parole holds, and hear and determine appropriate responses to alleged violations."

The implementation of the reentry courts may have a significant impact on reducing the number of mentally ill inmates in CDCR because it should reduce the number of parolees with mental illness returning to prison.

Defendants anticipate a reduction of 435 ADP by December 2011. This ADP estimate was developed during the budget process, and it was associated with a $10 million budget reduction. CDCR does not have any additional information to provide on how effective this program will be in reducing returns to custody.

D. ADMINISTRATIVE CHANGES

1. California's Out-of-State Correctional Facility Expansion

Defendants will expand the California Out-of-State Correctional Facility (COCF) program, which has as its primary purpose removing non-traditional beds and relieving crowding by transferring CDCR inmates to contracted out-of-state facilities. The COCF program was established in October 2006 under the Governor's Prison Overcrowding State of Emergency Proclamation. Assembly Bill 900 similarly authorized CDCR to transfer inmates out of state, but imposed additional restrictions on the transfer of inmates with medical and mental health conditions. CDCR currently maintains approximately 8,000 inmates in out-of-state facilities. Beginning in approximately February 2010, the COCF program will expand and CDCR has signed contracts to include up to 2,416 new Level III beds. By approximately January 2011, CDCR anticipates housing a total of 10,468 inmates at out-of-state facilities. The COCF program has been tremendously successful.

2. Community Correctional Facilities Utilization

Defendants intend to better utilize existing private Community Correctional Facilities (CCFs) in California to assist in the reduction of the prison population. CDCR established thirteen CCFs throughout California to house low-level inmates. CCFs prepare these inmates for their return to the community on parole. Robust oversight of the CCFs is already in place. However, CCFs have been underutilized by CDCR in the past, primarily because appropriate male inmates are also eligible for other types of housing, including minimum security facilities and camps. Yet, there appears to be an abundance of female inmates who are eligible for placement into these facilities.

Accordingly, CDCR recently closed three of these male facilities. The Information for Bid (IFB) will be sent out on or about January 27, 2010, with the last day for bidders' letters of inquiry on February 12, 2010.

Defendants estimate this program will net an approximate 800 inmate reduction by December 31, 2011.

3. Commutations of Sentence

The Governor will review cases of certain deportable inmates under his discretionary constitutional clemency authority. A commutation of sentence would result in an inmate's release from State custody into federal custody and deportation.

Defendants estimate this program will reduce CDCR's ADP by approximately 600 by December 31, 2011.

4. Discharge of Deported Parolees

Earlier this year CDCR implemented a new policy to discharge from parole the over 12,000 criminal aliens who have served their full state prison sentences and, upon release to parole, have been deported by the federal government. Previously, California had retained those criminal aliens on parole, even after their deportation. Under CDCR's new policy, those parolees have been discharged and additional parolees will be discharged from parole on an ongoing basis as CDCR receives confirmation of their deportation from the federal government. This new policy has resulted in fewer parolees being returned to state prison for parole violations and provides an incentive for federal prosecution of these offenders.

This proposal was in effect earlier this year and was accounted for in the new Fall 2009 Population Projections set forth in the Table at the end of this Response. Accordingly, the numbers previously stated in the September 18, 2009 Plan (at pp. 14, 19.) are not set forth separately in the Table.

5. Alternative Sanctions for Violations of Parole

CDCR will make greater use of electronic monitoring systems such as global positioning systems (GPS), for parole violators in lieu of revocation and re-incarceration. The expanded use of GPS and other electronic monitoring systems will permit CDCR to monitor those offenders outside of state prison for parole violations.

Defendants estimate this program will net an approximate 1,000 reduction in CDCR's ADP by December 31, 2011. This reduction reflects an assumption that CDCR will begin diverting offenders in March 2010, and that it will be able to acquire 300 GPS units per month until September 2010, when there will be 2,000 units in use. If the system truly diverted inmates for every day they would have otherwise spent in prison, the reduction in ADP would actually be 2,000. The 50% discount assumes that there will be processing time between offenders that wear the device and that, on average, a revocation action to prison would have been shorter than the time given to an inmate to wear GPS as a sanction.

II.

INCREASED CAPACITY

Assembly Bill 900 (AB 900) was passed by a bipartisan Legislature and signed into law by Governor Schwarzenegger on May 3, 2007. AB 900 allocates $7.6 billion, of which $6.4 billion is designed to reform CDCR by reducing prison overcrowding, increasing rehabilitation programs, and providing more beds for all inmates, including those requiring medical and mental health care. AB 900's comprehensive plan immediately relieved overcrowding by providing for additional out-of-state transfers. AB 900 also provides for new rehabilitation programs and re-entry facilities to ease parolees' transition back into California communities, thereby reducing recidivism, relieving prison overcrowding, and ensuring public safety.

The descriptions below are almost entirely the same as was presented to this Court in the State's September 18, 2009 Plan. Where numbers or timelines have changed, Defendants identify the discrepancy for the relevant project(s).

A. INFILL PROJECTS

Construction projects will result in new annex housing units and renovation of existing facilities. These projects will add bed capacity as well as additional office and treatment space to relieve operational pressures throughout CDCR institutions.

Newly constructed facilities are planned in stand-alone units and will operate semi-autonomously from the main institutions, though some space and/or functions, such as administrative services, may be shared by the main institutions to ensure the newly constructed facilities are fully serviced. Each newly constructed facility will have appropriate programming space and staffing for the population to be served.

Renovated facilities primarily represent current or former juvenile correctional facilities that are being repurposed to serve an adult male population. All renovated facilities will also provide for the reduction of nontraditional beds, and will have the requisite amount of programming space and staff for their intended populations. A description of each project follows by phase of funding as outlined in AB 900.[8] There are a few projects that are not funded through the AB 900 appropriation and those projects are noted.

1. Kern Valley State Prison

This project will result in 930 new beds in a Level IV semi-autonomous facility at the existing Kern Valley State Prison site, with the addition of five housing units on 33 acres using the 270 design celled-bed prototype. This construction will include space for rehabilitative programming (i.e., vocational, academic, substance abuse), work opportunities, and a health services building of approximately 22,000 square feet. A portion of these beds will be wheelchair-compliant beds.

This project will be submitted to the Joint Legislative Budget Committee (JLBC) for its approval in early 2010 with a request for State Public Works Board (PWB) approval and interim financing from the Pooled Money Investment Board (PMIB) to immediately follow. Necessary environmental impact review (EIR) documents are already underway. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2012-2013.

[8] CDCR is currently pursuing legislation to redirect $1 billion from its infill funding appropriation under AB 900 to the healthcare funding appropriation. The time lines set forth in this Response may change depending upon passage of that legislation. In addition, Defendants anticipate funding the proposed Consolidated Care Facility with the $1 billion in funds redirected from the infill appropriation.

2. Reception Center – Southern California

This project will result in 943 new beds in a cell-design semi-autonomous facility with five housing units, including the support space necessary to house reception center inmates. This project will also include a health services building to accommodate this population. Its location will be on the grounds of the California Institute for Men in Chino where CDCR's need for additional reception center beds is greatest. A portion of these beds will be wheelchair-compliant beds.

The Reception Center Prototype planning is being coordinated with the proposed renovation at the Heman G. Stark facility. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2012-2013.

3. Wasco State Prison – Level IV Celled Facility

This project builds a 1,896 bed Level IV semi-autonomous celled facility based on CDCR's 180-design prototype. This project includes eight housing units, with support and programming space planned for available land located on the unused land at the existing prison in Wasco. This project will also include a Correctional Treatment Center (CTC) to serve the population and a portion of the overall beds will be wheelchair-compliant.

This project is currently proposed for funding in Phase 2 of AB 900. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2012-2013.

B. DIVISION OF JUVENILE JUSTICE RENOVATIONS

1. Heman G. Stark Conversion

This project renovates an existing 1,200-cell Department of Juvenile Justice facility in Chino. It includes the installation of design elements necessary to house an adult male population (i.e., lethal electrified fence, guard towers, etc.), ADA improvements, expanded or new administrative support buildings, and a new health services building. This plan provides for double-celling a portion of the facility and envisions approximately 1,800 beds. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, 700 beds should come on line in or about December 2010, and 1,100 beds in or about June 2011.

The description above, submitted as a part of the September 18, 2009 Plan, differs slightly from the November 6, 2009 long-range bed plan submitted in the *Coleman* court. The September 18, 2009 Plan set out to establish the net gain of 1,800 beds to the adult male population. These beds are being phased into CDCR's design capacity based on the vacancy of DJJ's ward population at Stark. The November 6, 2009 *Coleman* filing, on the other hand, reflects that these beds will be renovated to provide bed and treatment space for a designated EOP and medical population and reflects only the number of beds specific to the *Coleman* population. These mental health beds will come on line in or about Fiscal Year 2013-2014. CDCR continues to work on developing the scope of this project with the *Plata v.*

Schwarzenegger Receiver and the *Coleman* Special Master. The activation schedule submitted in the *Coleman* filing reflects full activation for the *Coleman* population.

2. Department of Juvenile Justice Conversion – Paso Robles

This project renovates a former juvenile justice facility located in Paso Robles. This facility currently includes both dorms and an existing 270-celled prototype. The intended capacity is approximately 899 beds which includes some double-celling of the population. This is intended for a general population facility with a health-care mission and will serve elderly inmates with healthcare needs. The scope of work would include a new lethal electrified fence to increase the security level of the facility from a Level I to a Level II, as well as building code updates, ADA improvements, and an expanded healthcare facility. A portion of these beds will be wheelchair-compliant beds.

This project is anticipated to be submitted to the JLBC in Fall 2009 for approval and will subsequently be submitted to the State PWB and the PMIB for approval and financing. The EIR document is already underway. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2012-2013.

3. Department of Juvenile Justice Conversion – DeWitt

This project renovates a former juvenile justice facility located in Stockton. The intended capacity is approximately 1,133 beds which includes some double-celling of the population. The facility is intended for a general population facility with a health care mission and will serve inmates with medical outpatient needs and inmates requiring Enhanced Outpatient Program mental health services. CDCR is consulting with the *Plata* Receiver to identify the appropriate scope for the project.

This project is currently proposed for funding in Phase 1 of AB 900. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2013-2014.

C. HEALTHCARE PROJECTS

The healthcare projects described below include renovation and expansion of existing facilities to add housing, office, and/or treatment space to further meet the healthcare needs of CDCR's adult inmates at its existing prisons. Several of these projects are being constructed pursuant to specific court orders. Also, many of these projects are being planned in consultation with the *Plata* Receiver.

1. Northern Consolidated Care Facility

This project provides for a large healthcare facility serving a medical and mental health population to include specialized housing, treatment, and support space at the site of the former Karl Holton Juvenile Correctional Facility in Stockton and for which an environmental document has been filed with the State Clearinghouse. This facility would provide approximately 1,722

new beds serving high acuity medical and mental health patients, including mental health crisis beds.

The population number and occupancy dates for this project have been refined since the September 18, 2009 Plan. The bed number has increased from 1,702 to 1,722 and the occupancy date for the project has been set out to Fiscal Year 2013-2014. The original schedule submitted in the September 18, 2009 Plan was predicated on the *Plata* Receiver's delivery method. The current schedule, however, is based on that authority currently maintained by CDCR for design bid/build approach to construction.

2. San Quentin State Prison – Correctional Treatment Center (Building 22)

This project is a renovation and replacement of the existing infirmary at San Quentin State Prison and will include a Correctional Treatment Center providing 41 medical and mental health beds. Assuming no obstacles arise, anticipated completion is in or about January 2010.

3. California Men's Colony – Mental Health Crisis Beds

This project builds a 50-bed mental health crisis facility on available land at the California Men's Colony in San Luis Obispo. This project scope and schedule are being coordinated with the Special Master in the *Coleman* case. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, Defendants anticipate first occupancy in these beds in August 2012 with full occupancy by October 2012 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

4. California State Prison, Lancaster – Enhanced Outpatient Program

This project builds additional treatment and office space to increase by 150 the number of Enhanced Outpatient Program mental health inmate patients served at California State Prison, Lancaster. This project's scope and schedule are being coordinated with the Special Master in the *Coleman* case. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, Defendants anticipate activation of this treatment and office space in July 2012 with full activation by mid September 2012 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

5. California Medical Facility – Intermediate Care Facility

This project builds a 64-bed Intermediate Care Facility to serve mental health patients on the grounds of the California Medical Facility. This project scope and schedule are being coordinated with the Special Master in the *Coleman* case. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about November 2012 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

6. California Medical Facility – Enhanced Outpatient Program

This project adds 67 Enhanced Outpatient Program – General Population beds and builds office and treatment space to serve 600 Enhanced Outpatient Program – General Population inmate-patients on the grounds of the California Medical Facility. This project's scope and schedule are being coordinated with the Special Master in the *Coleman* case. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about April 2013 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

7. California State Prison, Sacramento – Enhanced Outpatient Program

This project builds office and treatment space to serve 192 Enhanced Outpatient Program mental health inmate patients on the grounds of California State Prison, Sacramento. This project scope and schedule are being coordinated with the Special Master in the *Coleman* case. This project is not funded through AB 900. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about November 2011 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

8. San Quentin State Prison – Condemned Inmate Complex Correctional Treatment Center

This project builds 1,152 beds in a new Condemned Inmate Complex on the grounds of San Quentin. This project will include a 24-bed Correctional Treatment Center serving the medical and mental health needs of the inmate population. CDCR will submit this project for funding in Fall of 2009 and expects to award contracts and break ground in March 2010. This project is not funded through AB 900. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about Fiscal Year 2011-2012.

9. Salinas Valley State Prison – Enhanced Outpatient Program

Defendants identified two Salinas Valley State Prison (SVSP) projects in their September 18, 2009 Plan: 1) a 96-Bed Enhanced Outpatient Program – General Population (EOP-GP) project that would convert an existing housing unit to provide EOP-GP housing for 96 EOP-GP inmates, and would expand the existing mental health services building to provide the additional treatment and office space needed for this increased EOP-GP capacity;[9] and 2) a 72-bed EOP Administrative Segregation Unit (ASU) that would provide housing, treatment, and office space for 72 EOP-ASU inmate-patients.

After careful analysis and, in consultation with the *Coleman* Special Master as well as the *Plata* Receiver, CDCR determined that the most feasible alternative would be to replace the two SVSP projects with a new consolidated project that will provide treatment and office space for 300 inmate-patients.

[9] This project was scoped to include the existing 192 EOP-GP inmate-patients, plus an additional 96 EOP-GP beds.

This new project, known as the 300 EOP-GP Treatment and Office Space A-Quad Project, will require the design and construction of a new treatment and office building on "A" yard and the relocation of all EOP-GP inmate-patients to that yard. This project will result in 12 more EOP-GP beds than CDCR's previous plan.[10] The 72-bed EOP-ASU unit will stay in its current location; that is, Buildings D1 and D2.[11] The existing Mental Health treatment space located on Facility D will accommodate the 72-bed EOP-ASU unit, and thereby negate the need for construction of treatment space for that population.

On November 6, 2009, Defendants sought approval from the *Coleman* Court to replace the two SVSP court-ordered projects with the new SVSP 300 EOP-GP Treatment and Office Space A-Quad Project. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about October 2013.

10. California Institute for Women – Psychiatric Services Unit

This project intends to renovate existing housing at the California Institute for Women in Chino to provide housing and treatment for a 20-bed Psychiatric Services Unit serving the mentally ill offender population. This project scope and schedule are being coordinated with the Special Master in the *Coleman* case. This project is not funded through AB 900. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about February 2011 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

11. California State Prison, Sacramento – Psychiatric Services Unit

This project provides office and treatment space to serve 152 Psychiatric Services Unit mental health inmate patients on the grounds of the California State Prison, Sacramento. This project scope and schedule are part of the construction projects proposed in the *Coleman* case.

If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about May 2013 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

12. California State Prison, Corcoran – Enhanced Outpatient Program

This project will add office and treatment space to serve an additional 45 Enhanced Outpatient Program mental health inmate patients on the grounds of California State Prison, Corcoran.

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[10] The current EOP-GP Treatment and Office Space and Housing Unit Conversion Project is designed to provide treatment and office space for the existing 192 EOP-GP inmate-patients, plus an additional 96 inmate-patients, for a total of 288 beds. The new 300 EOP-GP Treatment and Office Space A-Quad Project is designed to serve 300 inmate-patients, for an increase of 12 beds.

[11] The 72-bed EOP-ASU unit consists of 45 existing EOP-ASU beds as well as the 27 new beds that are part of Defendants' short-term bed plan filed on May 26, 2009, and which Defendants propose to make permanent.

If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about April 2013 as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

13. Southern California Crisis Beds

This project will site a new 60-bed unit, 30 beds of which will be designed as mental health crisis beds, at the Heman Stark facility in Chino. These beds were to be located initially at the Consolidated Care Facility. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, these beds should come on line in or about Fiscal Year 2013, as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

14. California Institute for Women – 45 Bed Intermediate Care Facility

This project will build a new 45-bed intermediate care facility at the California Institute for Women to serve the mental health population for female adults in the custody of CDCR. Preliminary plans are complete with this project and it is currently in the working drawings phase, with construction to be funded by AB 900 funds. The project scope and schedule are being coordinated with the *Coleman* Special Master. If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, anticipated completion is in or about March 2012, as reflected in the activation schedule submitted with the *Coleman* November 6, 2009 long-range bed plan.

D. REENTRY PROJECTS

Pursuant to AB 900, reentry projects provide for the design and operation of secure community reentry facilities located in communities throughout the state. These facilities will hold a maximum of 500 inmates who are within 6-12 months of being released. These facilities will be autonomous facilities and have been designed to facilitate an intensive rehabilitative programming environment and include healthcare treatment space for the population to be served.

To date, eleven counties have agreed to locate a reentry facility to serve their population. The first reentry facilities are being planned in the counties of Kern, Madera, San Joaquin (to also serve Amador and Calaveras), San Luis Obispo (to also serve Santa Barbara and San Benito), and San Bernardino. A reentry facility planned for San Diego is currently being sited. Additional counties have expressed interest in supporting reentry facilities in their communities.

If requisite approvals are obtained, there are no legal challenges, and there are no construction delays, Defendants estimate this program will build approximately 500 beds in or about Fiscal Year 2010-2011, 500 additional beds in or about Fiscal Year 2012-2013, 1,500 additional beds in or about Fiscal Year 2013-2014, and 5,500 additional beds in or about Fiscal Year 2014-2015.

SECTION TWO

ADDITIONAL REFORMS THAT REQUIRE EITHER FURTHER LEGISLATION OR FEDERAL COURT ORDERS

The Administration has demonstrated its willingness to reform the State's prisons, and the Administration will continue to push for meaningful reforms like the reforms adopted in SB 18. The following measures, however, cannot be accomplished administratively, and they will require legislative changes or federal court orders. The Defendants believe that it is not appropriate for this Federal Court to effect State law changes, and that such changes should be implemented by the State's executive and legislative branches. Moreover, as the Defendants pointed out in the September 18, 2009 Plan, they believe that State law waivers are not permissible here.[12] Nonetheless, pursuant to the Court's October 21, 2009 order, Defendants now identify, wherever possible, State laws that, if waived or changed by federal court order, would allow the Defendants to implement additional reduction measures.

A. ADDITIONAL CALIFORNIA OUT-OF-STATE CORRECTIONAL FACILITY EXPANSION

In addition to the 2,416 bed expansion set forth above, Defendants will work with the Legislature to remove the existing clause that calls for the termination of the out-of-state program. The 2006 Prison Overcrowding State of Emergency Proclamation suspended the consent provisions of Penal Code section 11191. However, it is unclear the extent to which CDCR will be able to rely on the Emergency Proclamation in the future for out of state transfers, and section 11191, which becomes operative on July 1, 2011, makes clear that inmates must consent to out of state transfers. This Court could immediately and indefinitely waive the consent provisions in section 11191 to allow out of state transfers to continue uninterrupted. Additionally, this Court could immediately waive the provisions in section 11191 requiring attorney consultations, which entails a costly and time consuming process. The Court could also waive the provisions of section 11191 that restrict CDCR's ability to transfer out of state inmates with serious medical and mental health conditions, and inmates in the mental health delivery system at the Enhanced Outpatient Program level of care or higher. These waivers would allow CDCR to continue to transfer inmates out of state indefinitely, expand the pool of inmates eligible for transfer, and expedite the transfer process. They would also facilitate CDCR entering

[12] The Court's August 4, 2009 order stated, "[s]hould any of defendants' proposed population reduction measures require the waiver of any provisions of state law, the state shall so advise the court, and shall explain why the requested waiver is permissible under 18 U.S.C. § 3626(a)(1)(b)." The State's September 18, 2009 Plan pointed out that this Court did not permit Defendants to introduce evidence regarding whether there are any current and ongoing violations of federal rights. Plaintiffs were also not required to prove, nor did they prove, that there are any current and ongoing violations. Thus, the State Defendants continue to preserve their objection that state law waivers are impermissible here, because State Defendants believe that the statutory requirements authorizing such waivers have not been satisfied. Furthermore, because the recent improvements to healthcare and the plans set forth throughout this submission provide a form of relief correcting alleged federal violations, the State Defendants have not and do not affirmatively seek the waiver of any State law under the PLRA (*see* 18 U.S.C. § 3626(a)(1)(B)(ii)-(iii)).

into additional contracts, or establishing long-term contracts, with out-of-state facilities willing to house CDCR inmates.

With these changes, State Defendants estimate they will be able to expand the out-of-state program by approximately 1,500 beds by December 31, 2011, reducing its ADP by that amount.

B. PROPERTY CRIME THRESHOLDS

Numerous property crimes in California are punishable alternatively as a misdemeanor or a felony, depending on the dollar amount of the taking. For example, grand theft is punishable as a felony when the amount stolen exceeds $400, but is punishable as a misdemeanor when the amount stolen is $400 or less. In most cases, the threshold for determining the type of sentence imposed was established over 20 years ago. As time has passed and inflation risen, increasing numbers of these wobblers have become prosecutable as felonies, thereby resulting in greater numbers of offenders eligible for prison sentences rather than jail sentences.

For thirty-nine of these property crimes, SB 18 increased the dollar threshold to present-day values. For example, property crimes where the threshold was set at $400 were increased to $950. The aim was to expose fewer offenders to felony prosecution and prison terms and thereby reduce the prison population. However, SB 18 left the threshold for grand theft itself unchanged, an omission that does not capture the impact of that offense, and also undermines the effect of having changed many other property crimes because they could alternatively be charged as grand theft. Defendants seek legislation to increase the threshold of grand theft to $950. If fully implemented, Defendants estimate this program will net an approximately 2,152 reduction in CDCR's ADP.

This is not a proposal for which a Court order could waive the appropriate change in state law as an affirmative action is required. Absent additional legislation, Defendants would require a court order requiring them to refuse admission of any person into state prison who was convicted of a felony that did not meet the $950 threshold. This proposal would reduce the ADP at CDCR's adult institutions by 2,152 in December 2011.

The estimates for this proposal were obtained by a file review of 577 cases of inmates who were sent to prison based on the violations of specific state code sections. The files were then reviewed to determine the number of inmates that would not have been returned to custody if the property threshold was raised in value. This number was then projected out to all of similarly situated inmates to arrive at an anticipated reduction in ADP.

C. ALTERNATIVE CUSTODY PROGRAM

The Administration will seek legislation to establish a program of alternative custody options for lower-risk offenders. Certain offenders would be eligible to serve the last 12 months of their sentence under house arrest with GPS monitoring. House arrest may include placement in a residence, local program, hospital, or treatment center. Eligible inmates include inmates with 12 months or less remaining to serve, elderly inmates, and medically infirm inmates. The custody criteria is:

- non-violent (current and prior terms)
- non-serious (current and prior terms)
- no sex offenders
- low or moderate risk on the California Static Risk Assessment
- no immigration hold
- did not serve a Security Housing Unit term during current term of incarceration
- no guilty finding for serious rules violations listed in Title 15, section 3315, subdivision (a)(3)(A) through (a)(3)(C), during current term of incarceration
- no history of escape
- no holds, warrants, detainers
- no stay in a Psychiatric Services Unit housing during current term of incarceration

Absent additional legislation, this Court would need to waive Penal Code section 1170(a), which requires a term of imprisonment in State prison. Additionally, the Court may need to waive article I, sections 28(a)(5) and 28(f)(5) of the California Constitution.

The State estimates that this program will net an approximate 4,800 reduction in ADP by December 2011. The 4,800 ADP number is an estimate based on both eligible inmates in prison at the time (in July 2009, when the estimate was completed) and eligible new admissions projected to come into prison. The latter projection is based on a FY 08/09 intake cohort from court. This 4,800 ADP estimate also reflects a 35% discount for file review ineligibility (based on sample file reviews), a 3% discount to account for homeless parolees (based on Division of Adult Parole Operations' records for homeless parolees who would otherwise meet the criteria), and a 10% discount for those who would be unwilling to volunteer. The ADP figure is also based on an estimated length of sentence for the eligible population.

D. AB 900 CONSTRUCTION ACCELERATION

CDCR has cooperated with the *Plata* Receiver to develop CDCR's plan for healthcare beds, and has drafted legislation to enable CDCR to accelerate all of its construction authorized under AB 900 using alternative delivery methods. If the Legislature authorizes these amendments, CDCR would be able to expedite the construction of new capacity, including new healthcare facilities, and the construction of treatment and other support spaces to meet the needs of the *Plata* and *Coleman* class members.

Further, if so ordered by the Three-Judge Court, the following waivers of state laws may allow the State to complete some previously identified projects more expeditiously:

1. California Environmental Quality Act (CEQA) (Public Resources Code sections 21000- 21177): The State's environmental review process is lengthy, and it invariably extends the timeframe to complete any of CDCR's construction projects. For example, with respect to the projects proposed in the State's November 6, 2009 Long-Range Mental Health Bed Plan, the CEQA process in many instances lengthens the construction timeline by more than 200 days, and in one instance (the Heman G. Stark conversion) by more than 450 days. Additionally, the

environmental review process may result in litigation, which can further extend the timeframe for completing construction projects.

Waiving the CEQA process could potentially expedite construction on these projects. However, it is unknown whether the Joint Legislative Budget Committee would approve a project or if bond counsel would offer an unqualified bond opinion regarding the validity of AB 900 bonds if the Court waived the State's environmental review process. The authorization in AB 900 provides the only funding available for many of CDCR's projects. Joint Legislative Budget Committee approval is required under AB 900 and an unqualified bond opinion is necessary to market the bonds.

2. Public Contract Code (PCC) sections generally covering the approval and competitive bidding rules and requirements for State contracts:

a. Part 1 (sections 1100 et seq.) - General Administrative Provisions.

b. Part 2, Chapter 2, Article 2 (sections 10295 et seq.) - Approval of Contracts.

c. Part 2, Chapter 2, Article 3 (sections 10300 et seq.) - Competitive Bidding and Other Acquisition Procedures.

d. Part 2, Chapter 2, Article 4 (sections 10335 et seq.) - Contracts for Services.

e. Part 2, Chapter 3 (sections 12100 et seq.) - Acquisitions of IT Goods and Services.

f. Part 2, Chapter 3.5 (sections 12120 et seq.) - Acquisitions of Telecommunication Goods and Services.

E. HOUSE INMATES IN PRIVATE FACILITIES

An additional possible method to reduce the population to 137.5% of design capacity is to rapidly increase the number of available prison beds by expediting leasing, building, and/or operating new beds through establishment of private vendor contracts to house inmates and operate private correctional facilities in the State. Such waivers of state law would help expedite the contracting process and make available private correctional facilities ready for operation by a private vendor by August 2011.

The following is the list of waivers that would be required to achieve the most expedited establishment of newly constructed prison beds:

1. California Environmental Quality Act (CEQA) (Public Resources Code sections 21000- 21177) - In order for the vendor to provide housing and operation services pursuant to the above-described contract with CDCR, the vendor would need to construct one or more correctional facilities. CEQA applies to discretionary "projects" proposed to be carried out or approved by public agencies. Arguably, the contract between CDCR and the vendor may trigger CEQA in that the contract may be deemed an approval by CDCR of CEQA "projects" (including construction of a new facility). The CEQA compliance process is a time-consuming process

and construction of new correctional facilities by the vendor would be further delayed if legal actions are brought to challenge the adequacy of CEQA compliance.

2. Public Contract Code (PCC) sections generally covering the approval and competitive bidding rules and requirements for State contracts (except for public works projects):

a. Part 1 (sections 1100 et seq.) - General Administrative Provisions.
b. Part 2, Chapter 2, Article 2 (sections 10295 et seq.) - Approval of Contracts.
c. Part 2, Chapter 2, Article 3 (sections 10300 et seq.) - Competitive Bidding and Other Acquisition Procedures.
d. Part 2, Chapter 2, Article 4 (sections 10335 et seq.) - Contracts for Services.
e. Part 2, Chapter 3 (sections 12100 et seq.) - Acquisitions of IT Goods and Services.
f. Part 2, Chapter 3.5 (sections 12120 et seq.) - Acquisitions of Telecommunication Goods and Services.

3. Article VII of the California Constitution - Civil service hiring requirements.

4. State Civil Service Act (Government Code sections 18500 et seq.) - The purpose of this Act is to facilitate the operation of Article VII of the Constitution.

5. Government Code section 19130 - Enumerated exceptions to the civil service hiring requirements. Waiver of this section would be needed to avoid any potential argument, even after waiver of the Article VII and the State Civil Service Act, that the existence of this section implies that contracting for personal services is not permissible unless the conditions under section 19130 are met.

The above list is a preliminary list of State laws that, if waived, would allow Defendants to expedite the process of contracting with vendors to operate private correctional facilities. However, given more time, other state law waivers or other federal court orders may be needed to accomplish this proposal.

If these waivers were obtained, it is estimated that CDCR could build, lease or contract for facilities for private vendors and reduce the population at the existing 33 adult institutions by 5,000 ADP by December 31, 2011.

F. JAIL TIME FOR ENUMERATED FELONIES

The Administration will seek legislation for the following enumerated offenses listed below that would allow the offenses to be charged as felonies, but would limit the maximum sentences to 366 days which could only be served in county jail. Thus, while convictions would result in imprisonment in county jail, the offenses would remain felonies within the meaning of section 17 of the Penal Code. This proposal does not apply to anyone who has a prior conviction set forth

in Penal Code Section 1192.7(c) or have not suffered a strike within the meaning of Penal Code Section 667.5.

Absent legislation, the Court would have to order that CDCR not accept to State prison those enumerated crimes listed in this proposal.

The crimes for this proposal would be as follows:

- Health and Safety Code section 11350, subdivision (a). Possession of a controlled substance, including cocaine.
- Health and Safety Code section 11377, subdivision (a). Possession of a controlled substance, including methamphetamine.
- Penal Code section 476a. Check fraud.
- Penal Code section 487, subdivisions (b) and (c). Miscellaneous grand theft provisions involving agriculture, labor and real property.
- Penal Code sections 496 and 496d. Receiving stolen property.
- Penal Code section 666. Petty theft with a prior conviction of a certain offense.
- Penal Code section 667.5. Theft with a prior felony conviction of a certain offense.

The reduction in the ADP as a result of this proposal would be 11,815 by December 2011. To determine the reduction of ADP for this proposal, CDCR utilized data in OBIS. Specifically, CDCR looked at the number of admits to CDCR for these particular crimes. CDCR then estimated a reduction in ADP based on the average length of sentence for these individuals.

Three Judge Court-Ordered Response: Table 1

Fiscal Year	Current	Jun-2010	Dec-2010	Jun-2011	Dec-2011	Dec-2012	Dec-2013
Fall Population Projections[1]	**168,427**	**167,453**	**167,535**	**169,345**	**170,164**	**171,940**	**174,001**
Institution Population Reduction Measures							
Probation Reform							
Community Corrections	0	0	900	1,915	1,915	1,915	1,915
Sentencing Reform							
Enhanced Credit Earning	0	2,814	3,021	2,807	2,921	3,142	3,419
Executive Authority							
Expansion of Out-Of-State Placements[2]	0	1,434	2,352	2,416	2,416	2,416	2,416
Expanded Utilization of Private Prisons	0	0	0	400	800	800	800
ICE Commutations	0	300	600	600	600	600	600
Parole Reform							
Summary Parole	0	3,323	4,556	4,556	4,556	4,556	4,556
Alternative Parole Sanctions	0	119	600	1,000	1,000	1,000	1,000
Parole Reentry Courts	0	0	50	435	435	435	435
New Construction[3]							
DJJ Renovations	0	700	700	1,800	1,800	2,700	2,700
Reentry	0	0	0	500	500	500	1,000
Infill (including Healthcare)	0	64	125	125	125	1,436	7,111
Further Legislation/Court-Ordered Authority							
Property Crime Thresholds	0	425	1,700	2,121	2,152	2,152	2,152
Alternative Custody	0	0	1,200	3,000	4,800	4,800	4,800
No-Prison Felonies	0	7,753	11,633	11,815	11,815	11,815	11,815
Private In-State Prisons	0	0	0	2,000	5,000	5,000	5,000
Expansion of Out-Of-State	0	0	0	0	1,500	2,500	3,600
Total Population Reduction	**0,000**	**16,932**	**27,437**	**35,490**	**42,335**	**45,767**	**53,319**
Institution Population[4]	**150,978**	**133,072**	**123,623**	**117,298**	**109,462**	**107,806**	**99,720**
Institution Crowding Rate	**190%**	**167%**	**155%**	**147%**	**137.5%**	**135%**	**125%**

[1] The current population is based on the actual population count on November 4, 2009. The projections in June 2010 and thereafter assume the transfer of any backlogged inmates into state custody.
[2] Assumes cooperation from *Plata*, *Coleman*, *Perez*, and *Armstrong* courts.
[3] The beds identified on this table reflect the actual capacity for which they are being built. The double celling rate of these facilities vary by project. However, whatever the double celling rate, the beds or projects are being designed with an appropriate amount of program and clinical space to accommodate that number of inmates. Additionally, increases in capacity in 2014 and 2015 are not reflected in this chart.
[4] Excludes inmates in camps, private facilities and out-of-state facilities.

EXHIBIT B

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF JAY ATKINSON IN SUPPORT OF DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, JAY R. ATKINSON, declare as follows:

1. I am the Chief of the Offender Information Services Branch of the California Department of Corrections and Rehabilitation (CDCR). I have been employed in this position for since July 2009. I have been with the Offender Information Services Branch of CDCR since 1999, and have assisted in gathering data maintained by CDCR on numerous occasions. I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. As Chief of the Offender Information Services Branch, I am responsible for management and oversight of the Offender Information Services Branch which supplies research and analysis to CDCR and outside agencies regarding population estimates and projections.

3. CDCR's Offender Information Services Branch (OISB) compiles and retains summary statistical information about inmates and parolees. As described below, CDCR was able to estimate the reductions corresponding to the proposed measures included in Defendants' November 12, 2009 Response to the Court's October 21, 2009 Order to Reduce Prison Population to 137.5% of Design Capacity (Defendants' Response) by utilizing information contained within OISB's data warehouse.

4. **California Community Corrections Performance Incentives Act of 2009.** This program, established by the recent passage of Senate Bill 18 (SB 18), creates a system of rewards for probation success. The community corrections program established by this Act authorizes counties to receive funding for implementing and expanding evidence-based programs for felony probationers. By incentivizing probation success, California will lower the number of probationers sent to prison each year.

5. Defendants estimate that the California Community Corrections Performance Incentives Act of 2009 will net an approximate 1,915 reduction in CDCR's average daily population (ADP) by December 31, 2011. Defendants were able to

estimate this reduction by utilizing OISB data that reflected that CDCR receives approximately 19,150 new admissions per calendar year as a result of felony probation revocations. CDCR then made the assumption that the average return for revocation was one year and took the conservative estimate that this program would have a ten percent success rate. This reasonable calculation results in an ADP reduction in 1,915 that would be realized in full in by December 2011.

6. **Credit Earning Enhancements.** The passage of SB 18 also provides a number of credit earning enhancements. These enhancements include: one day of sentence credit for every day served in county jail from the time of sentencing; up to six weeks of credit per year for completion of approved programs; day-for-day credit for parole violators who are returned to custody and are otherwise eligible; two days' credit for every one day served once an inmate is endorsed to transfer to a fire camp; and one day of credit for every day served for all eligible inmates (regardless of whether an inmate is on a waiting list for a full-time assignment, participating in college, or undergoing reception center processing).

7. Defendants estimate the Credit Earning Enhancements will net an approximate 2,921 reduction in CDCR's ADP by December 31, 2011. Defendants were able to estimate this reduction by utilizing OISB data. CDCR has a simulation model that is used to create population projections for the future. This particular proposal is one that can use the simulation model to determine a net effect on the population on a month-by-month basis. Insofar as this proposal overlaps the proposal to house individuals in county jail who are convicted of certain enumerated offenses, CDCR discounted the reduction from this proposal by 15%.

8. **The Parole Violation Decision-Making Instrument.** The Parole Violation Decision-Making Instrument (PVDMI) helps determine the most appropriate sanctions for parolees who violate the conditions of parole. The PVDMI is effective in placing parolees in the right programs and returning the high risk parole violators to prisons, thereby increasing public safety while decreasing recidivism. CDCR does not have

sufficient information upon which to base a reduction in population, and therefore Defendants do not identify a population reduction associated with this reform measure.

9. **Property Crime Thresholds.** Defendants seek legislation to increase the threshold of grand theft from $400 to $950. If grand theft and other property crimes listed in SB 18 are fully implemented, Defendants estimate this program will result in an ADP reduction of approximately 2,152 by December 2011. Absent additional legislation, Defendants would require a court order requiring them to refuse admission of any person into state prison who was convicted of a felony that did not meet the $950 threshold. The estimates for this proposal were obtained by a file review of 577 cases of inmates who were sent to prison based on the violations of specific state code sections. The files were then reviewed to determine the number of inmates that would not have been sent to state prison if the property threshold was raised in value. This number was then projected out to all of similarly situated inmates to arrive at an anticipated reduction in ADP.

10. **Alternative Custody Program.** The Administration will seek legislation to establish a program of alternative custody options for lower-risk offenders. Certain offenders would be eligible to serve the last 12 months of their sentence under house arrest with GPS monitoring. The State estimates that this program will net an approximate 4,800 reduction in ADP by December 2011. This estimate is based on both eligible inmates in prison at the time (in July 2009, when the estimate was completed) and eligible new admissions projected to come into prison. The latter projection is based on a Fiscal Year 2008-09 intake cohort from court. This 4,800 ADP estimate also reflects a 35% discount for file review ineligibility (based on sample file reviews), a 3% discount to account for homeless parolees (based on Division of Adult Parole Operation's records for homeless parolees who would otherwise meet the criteria), and a 10% discount for those who would be unwilling to volunteer. The ADP figure is also

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based on an estimated length of sentence for the eligible population.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California on November 12, 2009.

JAY R. ATKINSON

EXHIBIT C

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF DAVID LEWIS IN SUPPORT OF DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, DAVID LEWIS, declare as follows:

1. I am the Deputy Director, Fiscal Services for the California Department of Corrections and Rehabilitation (CDCR). I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. I have been the Deputy Director of Fiscal Services/Acting Deputy Director, Fiscal Services for 14 months. I have been employed by CDCR for the past two years. As Deputy Director of Fiscal Services, I am responsible for overseeing all of CDCR's budgeting and accounting functions. As such, I am responsible for overseeing the development and implementation of CDCR's budget, proposing changes to the budget, and tracking expenditures.

3. Before working at CDCR, I worked as a consultant on public safety for the California State Senate for nearly two years. I also worked at the Department of Finance for four years. A significant amount of my work for the State Senate and the Department of Finance related to CDCR.

4. I was involved in informally estimating the reductions in the average daily population (ADP) of California's adult prisons that would have resulted from reform measures that were previously proposed by the Governor in April and May of this year.

5. At the beginning of 2009, California faced a two-year projected budget deficit of approximately $41.6 billion. In response, Governor Schwarzenegger reduced CDCR's budget by $400 million. As a result of this budget reduction (and subsequent budget reductions), several budget measures were presented to the Legislature in order to accommodate CDCR's reduced budget. The proposed budget measures were aimed at reducing spending, in part by reducing certain programs and the number of inmates housed in CDCR institutions. The monetary savings obtained by the proposed budget measures were not re-directed in any way to other programs, including rehabilitative programs, and were not re-directed to local communities. Instead, the monetary savings

were required in order to meet CDCR's reduced overall budget and address California's historic budget deficit.

6. The April 2009 budget proposals were aimed at addressing the budget reduction, not at reducing the population of California's adult prisons to 137.5% of design bed capacity in two years. Thus, formal population projections were not completed. However, in the course of estimating cost savings that would be realized, informal estimates of the possible reduction resulting from each measure were made by CDCR.

7. I assisted in analyzing the informal estimates of the possible reduction in the April 2009 proposed reform measures. Estimates of population savings were done using a variety of methods. To estimate the population related to changes in parole, the estimate was created by using the total parole population and excluding populations based on certain factors including the risk factor, and current and prior crimes, a similar percentage was also applied to the total prison population at that time. To estimate the impact of alternative sanctions an estimate of the time frame to roll out the program was used. Other estimates were created by the Offender Information Services Branch using established methodologies.

8. The April 2009 proposed reform measures included the following: (1) increase the monetary threshold for felony property crimes, including grand theft, with an estimated reduction in the average daily population (ADP) of 1,389 in Fiscal Year (FY) 2009-10 and up to 2,778 through FY2010-11; (2) eliminate parole for low and moderate risk non-serious, non-violent, non-sex offender parolees, with an estimated reduction in the ADP of 4,053 in FY2009-10 and up to 5,037 through FY2010-11; (3) provide credit-earning enhancements (including day-for-day jail credits, program completion credits, day-for-day credits for good behavior, and two-for-one credits to participate in fire camp training) with an estimated reduction in the ADP of 1,658 in FY2009-10 and up to 4,939 through FY2010-11; (4) discharge deported parolees from parole, with an estimated reduction in the ADP of 269 in FY2009-10 and up to 261 through FY2010-11; and (5) use GPS as an alternative sanction, with a reduction in the ADP of 1,029 in FY2009-10

and up to 1,900 through FY2010-11. These reforms would result in a 8,397 ADP reduction in FY2009-10 and up to 14,915 through FY2010-11, or to 179 percent of design capacity by the end of FY2009-10 and to 171 percent of design capacity by the end of FY2010-11.

9. At the time the Administration put forward the budget reduction proposals, possible overlap between the population reductions resulting from the measures was not accounted for in calculating the total reduction that could be achieved. Accordingly, the estimated population reductions for the measures are not independent of each other, and an inmate may fall into one or more proposed reform measure categories.

10. Additional prison population reduction reform measures were proposed in the 2009 May Revise budget proposal. These additional reforms would have reduced the adult prison population by additional estimated 18,405 inmates by the end of FY2009-10, and up to 22,209 inmates through FY2010-11. These three additional reforms included: (1) deportation of undocumented inmates, with an estimated reduction in the ADP of 8,505 in FY 2009-10 and up to 8,712 through FY2010-11; (2) change sentencing options for certain crimes that may currently be charged as either a misdemeanor or felony ("wobbler" crimes) so they are only chargeable as a misdemeanor, with an estimated reduction in the ADP of 4,343 in FY2009-10 and up to 14,497 through FY2010-11; and (3) provide alternative housing options for low-level offenders, with an estimated reduction in the ADP of 6,307 in FY2009-10.

11. Combined, the April 2009 proposed reforms and the 2009 May Revise budget proposal would have a total estimated reduction in the ADP by 26,802 inmates (or 156% of design capacity) in FY2009-10, and up to 37,124 inmates (or 143% of design capacity) through FY2010-11. Attached as Exhibit 1 is a chart that details each proposed reform measure, the informal estimate of the corresponding reduction in the ADP, proposed implementation date, and subsequent legislative action. Again, at the time the Administration put forward the budget reduction proposals, possible overlap between the population reductions resulting from the measures was not accounted for in

calculating the total reduction that could be achieved. Accordingly, the estimated population reductions for the measures are not independent of each other, and an inmate may fall into one or more proposed reform measure categories.

12. Of the reforms proposed in the April 2009 proposal and the 2009 May Revise, five required legislative approval. Those five reform measures included: (1) increasing the monetary threshold for felony property crimes, including grand theft; (2) providing alternative housing for low-level offenders; (3) restricting wobbler crimes to be charged as misdemeanors; (4) eliminating parole for certain parolees; (5) credit-earning enhancements. These proposed reform measures were introduced to the California Senate in the form of ABx3 14.

13. In addition to the above five measures introduced to the California Senate in the form of ABx3 14, the California Legislature also proposed three additional reforms that were included in ABx3 14. Those reforms were: (1) the California Community Corrections Performance Incentives Act of 2009: a fiscal incentive program for county probation departments that demonstrate success; (2) the establishment and expansion of drug and mental health reentry courts for parolees; and (3) creation of a public safety commission to review sentencing.

14. ABx3 14 was passed by the California Senate on August 20, 2009, by a vote of 21 ayes to 19 noes. Because ABx3 14, in the form approved by the California Senate, is over 375 pages, Defendants do not attach it as an exhibit. However, it may be accessed at http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_bill_20090820_amended_sen_v96.pdf. Attached as Exhibit 2 is a true and correct copy of the unofficial ballot indicating the Senate vote on ABx3 14.

15. ABx3 14 was never presented to the California Assembly for a vote in the form approved by the Senate. Instead, SBx3 18 was presented to the Assembly and was passed on August 31, 2009, by a vote of 41 ayes, 37 noes, 1 member abstaining, absent, or not voting, and 1 vacancy. Attached as Exhibit 3 is a true and correct copy of the unofficial ballot indicating the Assembly vote on SBx3 18. SBx3 18 does not include

four proposed reform measures that the Senate approved: (1) increasing the monetary threshold for grand theft; (2) providing alternative housing for low-level offenders; (3) restricting wobbler crimes such that they may only be charged as a misdemeanor; and (4) the creation of a sentencing commission.

16. The California Senate then voted to approve this version of the bill on September 11, 2009, by a vote of 21 ayes, 16 noes, and 3 members either abstaining, absent, or not voting. The legislation was signed into law by the Governor on October 10, 2009. Attached as Exhibit 4 is a true and correct copy of SBx3 18 in the form approved by the California Legislature and signed by the Governor.

17. The Legislature adjourned on October 26, 2009. This means that the laws enacted in SBx3 18 will go into effect 90 days later, on January 24, 2010.

18. On September 17, 2009, CDCR's budget for rehabilitation programs for adult offenders was reduced by $250 million. However, this budget reduction was accounted for in Defendants' September 18, 2009 Population Reduction Plan, and accordingly, would not have affected CDCR's the population reductions proposed in Defendants' September 18, 2009 Population Reduction Plan. Similarly, to the extent that Defendants' "November 12, 2009 Response to the Court's October 21, 2009 Order to Reduce Prison Population to 137.5% of Design Capacity" (Defendants' Response) relies upon rehabilitation programs, the September 17, 2009 budget reduction has been accounted for.

19. CDCR's Offender Information Services Branch (OISB) compiles and retains summary statistical information about inmates and parolees. As described below, CDCR was able to estimate the reductions associated with the proposed measures included in Defendants' Response by utilizing information contained within OISB's data warehouse.

20. **"Summary Parole."** The enactment of SB 18 creates a new program of "summary parole" whereby CDCR is prohibited from returning to prison, placing a parole hold, or reporting to the Board of Parole Hearings, any parolee who meets the following

conditions: (1) is not a sex offender; (2) has not been committed to prison for a sexually violent offense; (3) has no prior conviction for a sexually violent offense; (4) has no instant or prior convictions that are violent or serious; (5) has not been found guilty of a serious disciplinary offense as defined by CDCR during his or her current term of imprisonment; (6) is not a validated prison gang member or associate, as defined in CDCR regulations; (7) has not refused to sign any written notification of parole requirements or conditions; and (8) has not been determined to pose a high risk to reoffend pursuant to a validated risk assessment tool. Defendants anticipate that "summary parole" will reduce CDCR's institutional population because, when fully implemented, CDCR will be precluded from revoking parole and returning approximately 35,000 parolees to prison for parole violations.

21. Defendants estimate that Summary Parole will net an approximate 4,556 reduction in CDCR's ADP by December 31, 2011. This estimated reduction in ADP was achieved by first identifying the total number of adult parolees in 2008 that were non-serious, non-violent, non-sex offenders, with no prior serious or violent offenses, which was converted to a percentage and applied to the Spring 2009 Population Projection numbers of parolees to give an updated number of applicable parolees. Then, using data from the Division of Adult Parole Operations (DAPO) the percentage of this population that were low and moderate risk were applied to estimate the applicable parole population. Then, it was assumed that a like percentage of the total number of Parole Violators Returned to Custody (PV-RTC) inmates would not go to prison, and this determined the total expected prison ADP reduction. Then, it was assumed that it would take approximately 5 months for the total impact of the ADP reduction to be realized so that was calculated to reduce the ADP in 2009-10. The 4,556 number is based on the best information available at the time. Of course, actual implementation may vary from these numbers. Factors that could not be accounted for include: (1) crimes that do not show up on the Offender Based Information System (OBIS) such as those committed in other states that may render an individual ineligible; (2) changes in local prosecutorial

behavior resulting in some of these offenders coming to prison with a longer sentence as a Parole Violator With a New Term (PV-WNT).

22. **Re-entry Courts.** CDCR will collaborate with the California Administrative Office of the Courts to establish and expand drug and mental health reentry courts for parolees. The implementation of the reentry courts should have a significant impact on reducing the number of mentally ill inmates in CDCR because it should reduce the number of parolees with mental illness returning to prison. Because this program has not yet been implemented, CDCR is not able to identify a formal estimate. However, State Defendants estimate this program will reduce CDCR's ADP by approximately 435 inmates by December 31, 2011. This ADP estimate was developed by dividing the $10 million reduction in CDCR's budget for reentry courts by the per capita annual inmate cost of approximately $23,000.[1]

23. **Discharge of Deported Parolees.** CDCR has implemented a new policy to discharge from parole the over 12,000 criminal aliens who have served their full state prison sentences and, upon release to parole, have been deported by the federal government. This new policy has resulted in fewer parolees being returned to state prison for parole violations and provides an incentive for federal prosecution of these offenders. This proposal was in effect earlier this year and was accounted for in the new Fall 2009 Population Projections as set forth in Table 1 of Defendants' Response.

24. **Alternative Sanctions for Violations of Parole.** CDCR will make greater use of electronic monitoring systems such as global positioning systems (GPS) for parole violators in lieu of revocation and re-incarceration. Defendants estimate this program will net an approximate 1,000 reduction in CDCR's ADP by December 31, 2011. This reduction reflects an assumption that CDCR will begin diverting offenders in March 2010 and that it will be able to acquire 300 GPS units per month until September

[1] The per capita annual inmate cost of $23,000 is an estimated cost developed by CDCR, and is used by CDCR for estimating the impact of legislation and other proposals, such as ballot initiatives, that have the affect of reducing the prison and/or parole populations.

2010, when there will be 2,000 units in use. If the system diverted inmates for every day they would have otherwise spent in prison, the reduction in ADP would actually be 2,000. The 50% discount assumes that there will be processing time between offenders that wear the device and that, on average, a revocation action to prison would have been shorter than the time given to an inmate to wear GPS as a sanction.

25. **Jail Time for Enumerated Felonies.** The Administration will seek legislation for certain enumerated offenses that would allow the offenses to be charged as felonies, but would limit the maximum sentences to 366 days which could only be served in county jail. Thus, while convictions would result in imprisonment in county jail, the offenses would remain felonies within the meaning of section 17 of the penal code. The reduction in the ADP as a result of this proposal would be 11,815 by December 2011. To determine the reduction of ADP for this proposal, CDCR utilized data in OBIS. Specifically, CDCR looked at the number of admits to CDCR for these particular crimes. CDCR then estimated a reduction in ADP based on the average length of sentence for these individuals.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California on November 12, 2009.

DAVID LEWIS

EXHIBIT 1

Prison Reform Measures -- Proposals And Legislative Action

Proposed Reform Measures	Estimated Reduction in ADP '09-10	Estimated Reduction in ADP '10-11	Estimated Date of Implementation	Senate Action - ABX3 14 (Aug. 20, 2009) (Votes: 21 ayes, 19 noes?)	Assembly Action - SBX 3 18 (Aug. 31, 2009) (Votes: 41 ayes, 37 noes)	Final SBx 3 18
Governor-Initiated Proposals						
• Increase the monetary threshold for grand theft from $400 to $2,500	1,389	2,778	July 1, 2009	passed	rejected and removed from bill	not included in final bill
• Provide alternative housing options for low-level offenders (alternative custody)	6,307	not provided	July 1, 2009	passed	rejected and removed from bill	not included in final bill
• Change sentencing options for certain crimes that may currently be charged as either a misdemeanor or felony ("wobbler" crimes) so they are only chargeable as a misdemeanor.	4,343	14,497	January 1, 2010	passed	rejected and removed from bill	not included in final bill
• Eliminate parole for low and moderate risk non-serious, non-violent, non-sex offender parolees: certain offender parolees will be placed on summary parole with no parole supervision	4,053	5,037	July 1, 2009	passed	passed	included in bill
• Credit-earning enhancements: day-for-day jail credits; program completion credits; day-for-day credits for good behavior; two-for-one credits to participate in fire camp training	1,658	4,939	July 1, 2009	passed	passed	included in bill

Proposed Reform Measures	Estimated Reduction in ADP '09-10	'10-11	Estimated Date of Implementation	Senate Action - ABX3 14 (Aug. 20, 2009) (Votes: 21 ayes, 19 noes?)	Assembly Action - SBX 3 18 (Aug. 31, 2009) (Votes: 41 ayes, 37 noes)	Final SBx 3 18
• Discharge deported parolees	269	261	May 1, 2009	no legislative action required	no legislative action required	not applicable
• Deport undocumented inmates	8,505	8,712	July 1, 2009	no legislative action required	no legislative action required	not applicable
• Use of GPS as an alternative sanction	1,029	1,900	July 1, 2009	no legislative action required	no legislative action required	not applicable
• Elimination of prison and parole programs	-750	-1,000	July 1, 2009	Reduced to $250 million	Reduced to $250 million	not applicable
• Creation of sentencing commission	unknown		January 1, 2010	passed	rejected and removed from bill	not included in final bill
TOTAL ESTIMATED REDUCTION	27,553	38,124				
PERCENT REDUCTION IN DESIGN BED CAPACITY	156%	143%				
Legislature-Initiated Proposals (ABX4 1, Sec. 67 - Chaptered July 28, 2009)						
• Community Corrections Performance Incentives: a fiscal incentive program for county probation departments that demonstrate success	none made		July 1, 2009	passed	passed	included in bill

Proposed Reform Measures	Estimated Reduction in ADP '09-10 '10-11	Estimated Date of Implementation	Senate Action - ABX3 14 (Aug. 20, 2009) (Votes: 21 ayes, 19 noes?)	Assembly Action - SBX 3 18 (Aug. 31, 2009) (Votes: 41 ayes, 37 noes)	Final SBx 3 18
• Parole reentry courts for parolees with drug and mental health needs	none made	July 1, 2009	passed	passed	included in bill

EXHIBIT 2

UNOFFICIAL BALLOT
MEASURE: ABX3 14
AUTHOR: Arambula
TOPIC: Corrections.
DATE: 08/20/2009
LOCATION: SEN. FLOOR
MOTION: Assembly 3rd Reading AB14 Arambula By Ducheny
(AYES 21. NOES 19.) (PASS)

AYES
****

Alquist Cedillo Corbett DeSaulnier
Ducheny Hancock Kehoe Leno
Liu Lowenthal Negrete McLeod Oropeza
Pavley Price Romero Simitian
Steinberg Wiggins Wolk Wright
Yee

NOES
****

Aanestad Ashburn Benoit Calderon
Cogdill Correa Cox Denham
Dutton Florez Harman Hollingsworth
Huff Maldonado Padilla Runner
Strickland Walters Wyland

ABSENT, ABSTAINING, OR NOT VOTING
****

EXHIBIT 3

Case3:01-cv-01351-TEH Document274-3 Filed11/12/09 Page18 of 73

UNOFFICIAL BALLOT
MEASURE: SBX3 18
AUTHOR: Ducheny
TOPIC: Corrections.
DATE: 08/31/2009
LOCATION: ASM. FLOOR
MOTION: SB 18 Ducheny Senate Third Reading By ARAMBULA Third Extraordinary Session
(AYES 41. NOES 37.) (PASS)

AYES
****

Ammiano Arambula Beall Blumenfield
Brownley Buchanan Charles Calderon Carter
Chesbro Coto Davis De La Torre
De Leon Eng Evans Feuer
Fong Fuentes Furutani Galgiani
Hall Hayashi Hernandez Hill
Huffman Jones Krekorian Bonnie Lowenthal
Monning John A. Perez Ruskin Salas
Saldana Skinner Solorio Swanson
Torlakson Torres Torrico Yamada
Bass

NOES
****

Adams Anderson Bill Berryhill Tom Berryhill
Blakeslee Block Caballero Conway
Cook DeVore Duvall Emmerson
Fletcher Fuller Gaines Garrick
Gilmore Hagman Harkey Huber
Jeffries Knight Lieu Logue
Ma Mendoza Miller Nava
Nestande Niello Nielsen V. Manuel Perez
Silva Smyth Audra Strickland Tran
Villines

ABSENT, ABSTAINING, OR NOT VOTING
****

Portantino Vacancy

EXHIBIT 4

Senate Bill No. 18

CHAPTER 28

An act to amend Sections 14491, 17550.19, and 21653 of the Business and Professions Code, to amend Section 5305 of the Financial Code, to amend Section 421 of the Military and Veterans Code, to amend Sections 154, 155, 337.4, 368, 422.7, 461, 463, 476a, 484b, 484g, 484h, 487, 487b, 487c, 487e, 487f, 487h, 496, 498, 500, 502, 537, 537e, 550, 551, 565, 566, 592, 594.4, 641.3, 2932, 2933, 2933.2, 2933.3, 2933.5, 2933.6, 2934, 2935, 3000, 4019, and 4600 of, to amend and renumber Section 2933.4 of, to add Sections 2933.05 and 3000.03 to, to add Article 2.3 (commencing with Section 3015) to Chapter 8 of Title 1 of Part 3 of, and to add and repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of, the Penal Code, to amend Sections 14591 and 41955 of the Public Resources Code, to amend Sections 10851.5 and 42002.4 of the Vehicle Code, and to amend Sections 10980 and 15656 of the Welfare and Institutions Code, relating to corrections.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 18, Ducheny. Corrections.

Existing law establishes certain values for determining if theft or certain other property crimes are punishable as felonies or not. Existing law provides that for many of these crimes, the threshold is $400, while the thresholds for certain other crimes are $100, $200, and $1,000, as specified.

This bill would increase certain of those thresholds, for example, by increasing certain $400 thresholds to $950.

By increasing local incarceration costs, this bill would impose a state-mandated local program.

Existing law provides for a 6-month reduction in a prisoner's term of confinement for every 6 months of full-time performance by the prisoner in a qualified work, training, or education program, as specified. Existing law provides that for every 6 days served in a specified local detention center following an arrest and prior to the imposition of a prison sentence for a felony conviction, 2 days shall be deducted from his or her period of confinement, as specified.

This bill would instead provide that certain prisoners shall earn one day of credit for every one day served either in the state prison or in a local facility prior to delivery to the state prison. This bill would provide for up to 6 weeks of additional credit for the successful completion of certain programs offered by the department, as specified. This bill would also expand an existing program for extra time credits for inmates assigned to

conservation camps to apply to inmates who are assigned to correctional institutions as inmate firefighters and to inmates who have completed the training for either of those assignments, as specified. This bill would also revise the time credits for certain prisoners confined or committed to a county jail or other specified facilities, as provided.

This bill would also provide criteria for the denial and loss of these credits, and would make various conforming and technical changes.

Existing law establishes provisions authorizing the department to oversee programs for the purposes of reducing parolee recidivism.

This bill would authorize each county to establish a Community Corrections Performance Incentives Fund (CCPIF) and would authorize the state to annually allocate money into a State Corrections Performance Incentives Fund to be used for certain purposes relating to improving local probation supervision practices and capacities, as specified. This bill would require the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, to make various calculations relating to the costs of incarceration, probation failure rates, and estimated numbers of adult felony probationers who are successfully prevented from being sent to prison per county, as specified. This bill would require the Department of Finance, in consultation with other specified agencies, to annually calculate 5% of the savings to the state attributed to those counties that successfully reduce the number of adult felony probationers sent to prison, and the bill would authorize those savings to be used to provide high performance grants to county probation departments to reduce recidivism among adult felony probationers. This bill would also require each county using CCPIF funds to identify and track specific outcome-based measures, as specified, and report to the Administrative Office of the Courts on the effectiveness of the programs paid for by the CCPIF.

This bill would require each county's community corrections programs to be developed and implemented by the probation department, as advised by a local Community Corrections Partnership. This bill would require specified local officials to serve as part of that Community Corrections Partnership. Because this bill would increase the duties for certain local officials, it would impose a state-mandated local program.

Existing law requires the Department of Corrections and Rehabilitation to release a prisoner on a specified period of parole after the expiration of a specified term of imprisonment. Under existing law, the department is authorized to return a parolee to prison if the Board of Parole Hearings determines that the parolee violated the terms of his or her parole, as specified.

This bill would prohibit the department from returning certain parolees to prison, placing a parole hold on the parolee, or reporting the parolee to the Board of Parole Hearings for a violation of parole, as specified.

Existing law requires the Department of Corrections and Rehabilitation to establish certain pilot programs to assist parolees in the successful reintegration of those parolees into the community.

This bill would require the Secretary of the Department of Corrections and Rehabilitation to establish a parole reentry accountability program for parolees who have been sentenced to a determinate term of imprisonment. The bill would require the department to employ a parole violation decisionmaking instrument to determine the most appropriate sanctions for parolees who violate their parole conditions. The bill would require the department to adopt regulations that make appropriate changes in policies and procedures to reflect the bill's intent.

The bill would also authorize the department to refer these parolees, if they have a history of substance abuse or mental illness and violate their parole conditions, to a reentry court program. The bill would require the secretary, subject to available funding, to enter into a memorandum of understanding with the Administrative Office of the Courts for the purpose of the establishment and operation of parolee reentry programs, as specified.

The bill would require the Judicial Council, in collaboration with the department, to design and perform an evaluation of the program to assess its effectiveness in reducing recidivism among parolees and reducing parole revocations. The bill would also require the Judicial Council, in collaboration with the department, to submit a final report of its findings to the Legislature and the Governor, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 14491 of the Business and Professions Code is amended to read:

14491. The violation of any of the provisions of this article is a misdemeanor, except that if the violation consists of unlawfully using,

selling, or secreting in any place supplies of a value exceeding nine hundred fifty dollars ($950), the violation is a felony.

SEC. 2. Section 17550.19 of the Business and Professions Code is amended to read:

17550.19. In addition to any civil penalties provided in this division, violation of this article is punishable as follows:

(a) As a misdemeanor by a fine of not more than ten thousand dollars ($10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment for each violation.

(b) In addition, any violation of Section 17550.14 or subdivision (b) or (c) of Section 17550.15 where money or real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates two thousand three hundred fifty dollars ($2,350) or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate nine hundred fifty dollars ($950) in any 12-month period, is punishable either as a misdemeanor or as a felony by imprisonment in the state prison for 16 months, or two or three years, by a fine of not more than twenty-five thousand dollars ($25,000), or by both that fine and imprisonment for each violation.

(c) In addition, any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony as provided in this section.

(d) Any violation of Section 17550.15 shall be a misdemeanor and shall be punished as provided in this section. Every act in violation of Section 17550.15 may be prosecuted as a separate and distinct violation and consecutive sentences may be imposed for each violation.

(e) Sellers of travel shall also comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

SEC. 3. Section 21653 of the Business and Professions Code is amended to read:

21653. Every junk dealer or secondhand dealer who resells any item acquired in violation of Section 21652 is guilty of a felony, if the value of the item exceeds nine hundred fifty dollars ($950), and is guilty of a misdemeanor if the value of the item does not exceed nine hundred fifty dollars ($950).

SEC. 4. Section 5305 of the Financial Code is amended to read:

5305. Any institution-affiliated party who abstracts or willfully misapplies any of the money, funds, or property of the savings association, or willfully misapplies its credit, is guilty of a felony and shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the amount abstracted or willfully misapplied does not exceed two hundred fifty dollars ($250), the offense shall instead be punishable by

a fine of not more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment.

SEC. 5. Section 421 of the Military and Veterans Code is amended to read:

421. Any person who secretes, sells, disposes of, offers for sale, purchases, retains after demand made by a commissioned officer of the National Guard or of the unorganized militia when called into the service of the state or Naval Militia, or in any manner pawns or pledges any arms, uniforms, equipment, or military or naval property of the state or of the United States, or of any organization of the active militia or of the unorganized militia when called into the service of the state is guilty of a felony if said arms, uniforms, equipments, or military or naval property of the state or of the United States is of a value of nine hundred fifty dollars ($950) or more, otherwise such person is guilty of a misdemeanor.

SEC. 6. Section 154 of the Penal Code is amended to read:

154. (a) Every debtor who fraudulently removes his or her property or effects out of this state, or who fraudulently sells, conveys, assigns or conceals his or her property with intent to defraud, hinder or delay his or her creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Where the property so removed, sold, conveyed, assigned, or concealed consists of a stock in trade, or a part thereof, of a value exceeding two hundred fifty dollars ($250), the offense shall be a felony and punishable as such.

SEC. 7. Section 155 of the Penal Code is amended to read:

155. (a) Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of that property, with intent to hinder, delay, or defraud the person bringing the action or recovering the judgment, or with such intent removes that property beyond the limits of the county in which it may be at the time of the commencement of the action or the rendering of the judgment, is punishable by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Where the property so concealed, sold, disposed of, or removed consists of a stock in trade, or a part thereof, of a value exceeding two hundred fifty dollars ($250), the offenses shall be a felony and punishable as such.

SEC. 8. Section 337.4 of the Penal Code is amended to read:

337.4. Any person who in the commission of touting obtains money in excess of nine hundred fifty dollars ($950) may, in addition to being prosecuted for the violation of any provision of this chapter, be prosecuted for the violation of Section 487 of this code.

SEC. 9. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or

in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court.

The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 10. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of nine hundred fifty dollars ($950).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 11. Section 461 of the Penal Code is amended to read:

461. Burglary is punishable as follows:

(a) Burglary in the first degree: by imprisonment in the state prison for two, four, or six years.

(b) Burglary in the second degree: by imprisonment in the county jail not exceeding one year or in the state prison.

SEC. 12. Section 463 of the Penal Code is amended to read:

463. (a) Every person who violates Section 459, punishable as a second-degree burglary pursuant to subdivision (b) of Section 461, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or in the state prison. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 240 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

For purposes of this section, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

(b) Every person who commits the crime of grand theft, as defined in Section 487, except grand theft of a firearm, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or in the state prison. Every person who commits the crime of grand theft of a firearm, as defined in Section 487, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison, as set forth in subdivision (a) of Section 489. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 160 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(c) Every person who commits the crime of petty theft, as defined in Section 488, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a misdemeanor, punishable by imprisonment in a county jail for six months. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 90 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(d) (1) For purposes of this section, "state of emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, "local emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to Section 8629 of the Government Code. For purposes of this section only, a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to Section 8630 of the Government Code.

(4) Consensual entry into a commercial structure with the intent to commit a violation of Section 470, 476, 476a, 484f, or 484g of the Penal Code, shall not be charged as a violation under this section.

SEC. 13. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check, or draft or order upon any bank or depositary, or person, or firm, or corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depositary, or person, or firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or in the state prison.

(b) However, if the total amount of all such checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed four hundred fifty dollars ($450), the offense is punishable only by imprisonment in the county jail for not more than one year, except that this subdivision shall not be applicable if the defendant has previously been convicted of a violation of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where the check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest shall be admissible as proof of presentation, nonpayment and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with the bank or depositary, or person, or firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if both of the following occur:

(1) When the payee accepts the check, draft or order from the drawer, he or she obtains from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. That information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depositary or person or firm or corporation for the payment of such check, draft or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.

The amount of the fee shall not exceed twenty-five dollars ($25) for each bad check in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to this section exceed ten dollars ($10) per check.

SEC. 14. Section 484b of the Penal Code is amended to read:

484b. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and that imprisonment if the amount diverted is in excess of two thousand three hundred fifty dollars ($2,350). If the amount diverted is less than or equal to two thousand three hundred fifty dollars ($2,350), the person shall be guilty of a misdemeanor.

SEC. 15. Section 484g of the Penal Code is amended to read:

484g. Every person who, with the intent to defraud, (a) uses, for the purpose of obtaining money, goods, services, or anything else of value, an access card or access card account information that has been altered, obtained, or retained in violation of Section 484e or 484f, or an access card which he or she knows is forged, expired, or revoked, or (b) obtains money, goods, services, or anything else of value by representing without the consent of the cardholder that he or she is the holder of an access card and the card has not in fact been issued, is guilty of theft. If the value of all money, goods, services, and other things of value obtained in violation of this section exceeds nine hundred fifty dollars ($950) in any consecutive six-month period, then the same shall constitute grand theft.

SEC. 16. Section 484h of the Penal Code is amended to read:

484h. Every retailer or other person who, with intent to defraud:

(a) Furnishes money, goods, services or anything else of value upon presentation of an access card obtained or retained in violation of Section 484e or an access card which he or she knows is a counterfeit access card or is forged, expired, or revoked, and who receives any payment therefor, is guilty of theft. If the payment received by the retailer or other person for all money, goods, services, and other things of value furnished in violation of this section exceeds nine hundred fifty dollars ($950) in any consecutive six-month period, then the same shall constitute grand theft.

(b) Presents for payment a sales slip or other evidence of an access card transaction, and receives payment therefor, without furnishing in the transaction money, goods, services, or anything else of value that is equal in value to the amount of the sales slip or other evidence of an access card transaction, is guilty of theft. If the difference between the value of all money, goods, services, and anything else of value actually furnished and the payment or payments received by the retailer or other person therefor upon presentation of a sales slip or other evidence of an access card transaction exceeds nine hundred fifty dollars ($950) in any consecutive six-month period, then the same shall constitute grand theft.

SEC. 17. Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400) except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars ($250).

(B) For the purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds two hundred fifty dollars ($250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded two hundred fifty dollars ($250) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars ($250).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars ($950) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(2) A firearm.

(e) This section shall become operative on January 1, 1997.

SEC. 18. Section 487b of the Penal Code is amended to read:

487b. Every person who converts real estate of the value of two hundred fifty dollars ($250) or more into personal property by severance from the realty of another, and with felonious intent to do so, steals, takes, and carries away that property is guilty of grand theft and is punishable by imprisonment in the state prison.

SEC. 19. Section 487c of the Penal Code is amended to read:

487c. Every person who converts real estate of the value of less than two hundred fifty dollars ($250) into personal property by severance from the realty of another, and with felonious intent to do so steals, takes, and carries away that property is guilty of petty theft and is punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 20. Section 487e of the Penal Code is amended to read:

487e. Every person who feloniously steals, takes, or carries away a dog of another which is of a value exceeding nine hundred fifty dollars ($950) is guilty of grand theft.

SEC. 21. Section 487f of the Penal Code is amended to read:

487f. Every person who feloniously steals, takes, or carries away a dog of another which is of a value not exceeding nine hundred fifty dollars ($950) is guilty of petty theft.

SEC. 22. Section 487h of the Penal Code is amended to read:

487h. (a) Every person who steals, takes, or carries away cargo of another, when the cargo taken is of a value exceeding nine hundred fifty dollars ($950), except as provided in Sections 487, 487a, and 487d, is guilty of grand theft.

(b) For the purposes of this section, "cargo" means any goods, wares, products, or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit.

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

SEC. 23. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars ($950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars ($950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of nine hundred fifty dollars ($950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in the state prison, or in a county jail for not more than one year.

SEC. 24. Section 498 of the Penal Code is amended to read:

498. (a) The following definitions govern the construction of this section:

(1) "Person" means any individual, or any partnership, firm, association, corporation, limited liability company, or other legal entity.

(2) "Utility" means any electrical, gas, or water corporation as those terms are defined in the Public Utilities Code, and electrical, gas, or water systems operated by any political subdivision.

(3) "Customer" means the person in whose name utility service is provided.

(4) "Utility service" means the provision of electricity, gas, water, or any other service provided by the utility for compensation.

(5) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(6) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing a normal or customary function.

(7) "Reconnection" means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility.

(b) Any person who, with intent to obtain for himself or herself utility services without paying the full lawful charge therefor, or with intent to enable another person to do so, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following shall be guilty of a misdemeanor:

(1) Diverts or causes to be diverted utility services, by any means.

(2) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.

(3) Tampers with any property owned by or used by the utility to provide utility services.

(4) Makes or causes to be made any connection with or reconnection with property owned or used by the utility to provide utility services without the authorization or consent of the utility.

(5) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

(c) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section shall permit an inference that the customer or person intended to and did violate this section:

(1) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor.

(2) Any meter that has been altered, tampered with, or bypassed so as to cause no measurement or inaccurate measurement of utility services.

(d) If the value of all utility services obtained in violation of this section totals more than nine hundred fifty dollars ($950) or if the defendant has

previously been convicted of an offense under this section or any former section which would be an offense under this section, or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in a county jail for not more than one year, or in the state prison.

(e) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state.

SEC. 25. Section 500 of the Penal Code is amended to read:

500. (a) Any person who receives money for the actual or purported purpose of transmitting the same or its equivalent to foreign countries as specified in Section 1800.5 of the Financial Code who fails to do at least one of the following acts unless otherwise instructed by the customer is guilty of a misdemeanor or felony as set forth in subdivision (b):

(1) Forward the money as represented to the customer within 10 days of receipt of the funds.

(2) Give instructions within 10 days of receipt of the customer's funds, committing equivalent funds to the person designated by the customer.

(3) Refund to the customer any money not forwarded as represented within 10 days of the customer's written request for a refund pursuant to subdivision (a) of Section 1810.5 of the Financial Code.

(b) (1) If the total value of the funds received from the customer is less than nine hundred fifty dollars ($950), the offense set forth in subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If the total value of the money received from the customer is nine hundred fifty dollars ($950) or more, or if the total value of all moneys received by the person from different customers is nine hundred fifty dollars ($950) or more, and the receipts were part of a common scheme or plan, the offense set forth in subdivision (a) is punishable by imprisonment in the state prison for 16 months, 2, or 3 years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

SEC. 26. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns,

governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access, or the denial of access to legitimate users of a computer system, network, or program.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not

limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(11) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by

a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation that does not result in injury, and where the value of the computer services used does not exceed nine hundred fifty dollars ($950), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds nine hundred fifty dollars ($950), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6) or (7) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000).

(B) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(4) Any person who violates paragraph (8) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(5) Any person who violates paragraph (9) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not one thousand dollars.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of any of the provisions of subdivision (c) may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. Compensatory damages shall include any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(4) In any action brought pursuant to this subdivision for a willful violation of the provisions of subdivision (c), where it is proved by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice as defined in subdivision (c) of Section 3294 of the Civil Code, the court may additionally award punitive or exemplary damages.

(5) No action may be brought pursuant to this subdivision unless it is initiated within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to punish any acts which are committed by a person within the scope of his or her lawful employment. For purposes of this section, a person acts within the scope of his or her

employment when he or she performs acts which are reasonably necessary to the performance of his or her work assignment.

(2) Paragraph (3) of subdivision (c) does not apply to penalize any acts committed by a person acting outside of his or her lawful employment, provided that the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or provided that the value of supplies or computer services, as defined in paragraph (4) of subdivision (b), which are used does not exceed an accumulated total of two hundred fifty dollars ($250).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 27. Section 537 of the Penal Code is amended to read:

537. (a) Any person who obtains any food, fuel, services, or accommodations at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, ski area, or public or private campground, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground by the use of any false pretense, or who, after obtaining credit, food, fuel, services, or accommodations, at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground, absconds, or surreptitiously, or by force, menace, or threats, removes any part of his or her baggage therefrom with the intent not to pay for his or her food or accommodations is guilty of a public offense punishable as follows:

(1) If the value of the credit, food, fuel, services, or accommodations is nine hundred fifty dollars ($950) or less, by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for a term not exceeding six months, or both.

(2) If the value of the credit, food, fuel, services, or accommodations is greater than nine hundred fifty dollars ($950), by imprisonment in a county jail for a term of not more than one year, or in the state prison.

(b) Any person who uses or attempts to use ski area facilities for which payment is required without paying as required, or who resells a ski lift ticket to another when the resale is not authorized by the proprietor, is guilty of an infraction.

(c) Evidence that a person left the premises of such an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, ski area, or public or private campground, without paying or offering to pay for such food, fuel, services, use of facilities, or accommodation, or that the person, without authorization from the proprietor, resold his or her ski lift ticket to another person after making use of such facilities, shall be prima facie evidence of the following:

(1) That the person obtained such food, fuel, services, use of facilities or accommodations with intent to defraud the proprietor or manager.

(2) That, if, after obtaining the credit, food, fuel, services, or accommodations, the person absconded, or surreptitiously, or by force, menace, or threats, removed part of his or her baggage therefrom, the person did so with the intent not to pay for the credit, food, fuel, services, or accommodations.

SEC. 28. Section 537e of the Penal Code is amended to read:

537e. (a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed nine hundred fifty dollars ($950), by imprisonment in a county jail not exceeding six months.

(2) If the value of the property exceeds nine hundred fifty dollars ($950), by imprisonment in a county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of nine hundred fifty dollars ($950) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

(b) For purposes of this subdivision, "personal property" includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.

(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

(c) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(d) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his or her duly appointed direct representative, or under specific authorization from the original manufacturer.

SEC. 29. Section 550 of the Penal Code is amended to read:

550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment

submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(B) When the claim or amount at issue is nine hundred fifty dollars ($950) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds nine hundred fifty dollars ($950) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed

one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is

established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.

SEC. 30. Section 551 of the Penal Code is amended to read:

551. (a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not

more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) For purposes of this section:

(1) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(2) "Contractor" has the same meaning as set forth in Section 7026 of the Business and Professions Code.

SEC. 31. Section 565 of the Penal Code is amended to read:

565. It is a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or both, for an unauthorized person to possess or use, or to obliterate or destroy the brand registration upon, containers (including milk cases), cabinets, or other dairy equipment, which have a value of nine hundred fifty dollars ($950) or less, when the containers, cabinets, or other dairy equipment are marked with a brand that is registered pursuant to Chapter 10 (commencing with Section 34501) of Part 1 of Division 15 of the Food and Agricultural Code. "Unauthorized person" shall have the meaning of that term as defined in Section 34564 of the Food and Agricultural Code.

SEC. 32. Section 566 of the Penal Code is amended to read:

566. It is a felony, punishable by a fine not exceeding one thousand five hundred dollars ($1,500), or by imprisonment, or both, for an unauthorized person to possess or use, or to obliterate or destroy the brand registration upon, containers (including milk cases), cabinets, or other dairy equipment, which have a value in excess of nine hundred fifty dollars ($950), when the containers, cabinets, or other dairy equipment are marked with a brand that is registered pursuant to Chapter 10 (commencing with Section 34501) of Part 1 of Division 15 of the Food and Agricultural Code. "Unauthorized person" shall have the meaning of that term as defined in Section 34564 of the Food and Agricultural Code.

SEC. 33. Section 592 of the Penal Code is amended to read:

592. (a) Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir used for the purpose of holding or conveying water for

manufacturing, agricultural, mining, irrigating, generation of power, or domestic uses is guilty of a misdemeanor.

(b) If the total retail value of all the water taken is more than nine hundred fifty dollars ($950), or if the defendant has previously been convicted of an offense under this section or any former section that would be an offense under this section, or of an offense under the laws of another state or of the United States that would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in a county jail for not more than one year, or in the state prison.

SEC. 34. Section 594.4 of the Penal Code is amended to read:

594.4. (a) Any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense, punishable by imprisonment in the state prison or in a county jail, by a fine as specified in subdivision (b), or by both that imprisonment and fine.

(b) (1) If the amount of the defacement, damage, destruction, or contamination is fifty thousand dollars ($50,000) or more, by a fine of not more than fifty thousand dollars ($50,000).

(2) If the amount of the defacement, damage, destruction, or contamination is five thousand dollars ($5,000) or more, but less than fifty thousand dollars ($50,000), by a fine of not more than ten thousand dollars ($10,000).

(3) If the amount of defacement, damage, destruction, or contamination is nine hundred fifty dollars ($950) or more, but less than five thousand dollars ($5,000), by a fine of not more than five thousand dollars ($5,000).

(4) If the amount of the defacement, damage, destruction, or contamination is less than nine hundred fifty dollars ($950), by a fine of not more than one thousand dollars ($1,000).

(c) For purposes of this section, "structure" includes any house or other building being used at the time of the offense for a dwelling or for commercial purposes.

SEC. 35. Section 641.3 of the Penal Code is amended to read:

641.3. (a) Any employee who solicits, accepts, or agrees to accept money or any thing of value from a person other than his or her employer, other than in trust for the employer, corruptly and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or any thing of value under those circumstances, is guilty of commercial bribery.

(b) This section does not apply where the amount of money or monetary worth of the thing of value is two hundred fifty dollars ($250) or less.

(c) Commercial bribery is punishable by imprisonment in the county jail for not more than one year if the amount of the bribe is one thousand dollars ($1,000) or less, or by imprisonment in the county jail, or in the state prison for 16 months, or two or three years if the amount of the bribe exceeds one thousand dollars ($1,000).

(d) For purposes of this section:

(1) "Employee" means an officer, director, agent, trustee, partner, or employee.

(2) "Employer" means a corporation, association, organization, trust, partnership, or sole proprietorship.

(3) "Corruptly" means that the person specifically intends to injure or defraud (A) his or her employer, (B) the employer of the person to whom he or she offers, gives, or agrees to give the money or a thing of value, (C) the employer of the person from whom he or she requests, receives, or agrees to receive the money or a thing of value, or (D) a competitor of any such employer.

SEC. 36. Chapter 3 (commencing with Section 1228) is added to Title 8 of Part 2 of the Penal Code, to read:

Chapter 3. California Community Corrections Performance Incentives

1228. (a) This chapter shall be known and may be cited as the California Community Corrections Performance Incentives Act of 2009.

(b) The Legislature finds and declares all of the following:

(1) In 2007, nearly 270,000 felony offenders were subject to probation supervision in California's communities.

(2) In 2007, out of 46,987 new admissions to state prison, nearly 20,000 were felony offenders who were committed to state prison after failing probation supervision.

(3) Probation is a judicially imposed suspension of sentence that attempts to supervise, treat, and rehabilitate offenders while they remain in the community under the supervision of the probation department. Probation is a linchpin of the criminal justice system, closely aligned with the courts, and plays a central role in promoting public safety in California's communities.

(4) Providing sustainable funding for improved, evidence-based probation supervision practices and capacities will improve public safety outcomes among adult felons who are on probation. Improving felony probation performance, measured by a reduction in felony probationers who are sent to prison because they were revoked on probation or convicted of another crime while on probation, will reduce the number of new admissions to state prison, saving taxpayer dollars and allowing a portion of those state savings to be redirected to probation for investing in community corrections programs.

1229. As used in this chapter, the following definitions apply:

(a) "Community corrections" means the placement of persons convicted of a felony offense under probation supervision, with conditions imposed by a court for a specified period.

(b) "Chief probation officer" means the chief probation officer for the county or city and county in which an adult offender is subject to probation for the conviction of a felony offense.

(c) "Community corrections program" means a program established pursuant to this act consisting of a system of felony probation supervision services dedicated to all of the following goals:

(1) Enhancing public safety through the management and reduction of offender risk while under felony probation supervision and upon reentry from jail into the community.

(2) Providing a range of probation supervision tools, sanctions, and services applied to felony probationers based on a risk/needs assessment for the purpose of reducing criminal conduct and promoting behavioral change that results in reducing recidivism and promoting the successful reintegration of offenders into the community.

(3) Maximizing offender restitution, reconciliation, and restorative services to victims of crime.

(4) Holding offenders accountable for their criminal behaviors and for successful compliance with applicable court orders and conditions of supervision.

(5) Improving public safety outcomes for persons placed on probation for a felony offense, as measured by their successful completion of probation and commensurate reduction in the rate of felony probationers sent to prison as a result of a probation revocation or conviction of a new crime.

(d) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

1230. (a) Each county is hereby authorized to establish in each county treasury a Community Corrections Performance Incentive Fund (CCPIF), to receive all amounts allocated to that county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, shall be made available to the chief probation officer (CPO) of that county, within 30 days of the deposit of those moneys into the fund, for the implementation of that county's community corrections program as authorized by this chapter.

(1) The community corrections program shall be developed and implemented by the probation department and advised by a local Community Corrections Partnership.

(2) The local Community Corrections Partnership shall be chaired by the chief probation officer and comprised of the following membership:

(A) The presiding judge of the superior court, or his or her designee.

(B) A county supervisor or the chief administrative officer for the county.

(C) The district attorney.

(D) The public defender.

(E) The sheriff.

(F) A chief of police.
(G) The head of the county department of social services.
(H) The head of the county department of mental health.
(I) The head of the county department of employment.
(J) The head of the county alcohol and substance abuse programs.
(K) The head of the county office of education.
(L) A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense.

(3) Funds allocated to probation pursuant to this act shall be used to provide supervision and rehabilitative services for adult felony offenders subject to probation, and shall be spent on evidence-based community corrections practices and programs, as defined in subdivision (c) of Section 1229, which may include, but are not limited to, the following:

(A) Implementing and expanding evidence-based risk and needs assessments.

(B) Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days.

(C) Providing more intensive probation supervision.

(D) Expanding the availability of evidence-based rehabilitation programs including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services.

(E) Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

(4) The chief probation officer shall have discretion to spend funds on any of the above practices and programs consistent with this act but, at a minimum, shall devote at least 5 percent of all funding received to evaluate the effectiveness of those programs and practices implemented with the funds provided pursuant to this chapter. A chief probation officer may petition the Administrative Office of the Courts to have this restriction waived, and the Administrative Office of the Courts shall have the authority to grant that petition, if the CPO can demonstrate that the department is already devoting sufficient funds to the evaluation of these programs and practices.

(5) Each probation department receiving funds under this chapter shall maintain a complete and accurate accounting of all funds received pursuant to this chapter.

1231. (a) Community corrections programs funded pursuant to this act shall identify and track specific outcome-based measures consistent with the goals of this act.

(b) The Administrative Office of the Courts, in consultation with the Chief Probation Officers of California, shall specify and define minimum required outcome-based measures, which shall include, but not be limited to, all of the following:

(1) The percentage of persons on felony probation who are being supervised in accordance with evidence-based practices.

(2) The percentage of state moneys expended for programs that are evidence-based, and a descriptive list of all programs that are evidence-based.

(3) Specification of supervision policies, procedures, programs, and practices that were eliminated.

(4) The percentage of persons on felony probation who successfully complete the period of probation.

(c) Each chief probation officer receiving funding pursuant to Sections 1233 to 1233.6, inclusive, shall provide an annual written report to the Administrative Office of the Courts and the Department of Corrections and Rehabilitation evaluating the effectiveness of the community corrections program, including, but not limited to, the data described in subdivision (b).

(d) The Administrative Office of the Courts shall, in consultation with the chief probation officer of each county and the Department of Corrections and Rehabilitation, provide a quarterly statistical report to the Department of Finance including, but not limited to, the following statistical information for each county:

(1) The number of felony filings.

(2) The number of felony convictions.

(3) The number of felony convictions in which the defendant was sentenced to the state prison.

(4) The number of felony convictions in which the defendant was granted probation.

(5) The adult felon probation population.

(6) The number of felons who had their probation revoked and were sent to prison for that revocation.

(7) The number of adult felony probationers sent to state prison for a conviction of a new felony offense, including when probation was revoked or terminated.

1232. Commencing no later than 18 months following the initial receipt of funding pursuant to this act and annually thereafter, the Administrative Office of the Courts, in consultation with the Department of Corrections and Rehabilitation, the Department of Finance, and the Chief Probation Officers of California, shall submit to the Governor and the Legislature a comprehensive report on the implementation of this act. The report shall include, but not be limited to, all of the following information:

(a) The effectiveness of the community corrections program based on the reports of performance-based outcome measures required in Section 1231.

(b) The percentage of felony probationers whose probation was revoked for the year about which the report is being made.

(c) The percentage of felony probationers who were convicted of crimes during their term of probation for the year about which the report is being made.

(d) The impact of the moneys appropriated pursuant to this act to enhance public safety by reducing the percentage and number of felony probationers

whose probation was revoked for the year being reported on for probation violations or new convictions, and to reduce the number of felony probationers who are sent to prison for the year about which the report is being made.

(e) Any recommendations regarding resource allocations or additional collaboration with other federal, state, regional, or local entities, or other for improvements to this act.

1233. (a) The Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate for each county a baseline probation failure rate that equals the average number of adult felony probationers sent to state prison during calendar years 2006 to 2008, inclusive, as a percentage of the average adult felony probation population during the same period.

(b) For purposes of calculating the baseline probation failure rate, the number of adult felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers sent to prison for conviction of a new crime who simultaneously have their probation term terminated.

1233.1. After the conclusion of each calendar year following the enactment of this section, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate the following for that calendar year:

(a) The cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison. This calculation shall take into consideration factors, including, but not limited to, the average length of stay in prison and on parole for probationers, as well as the associated parole revocation rates, and revocation costs.

(b) The statewide probation failure rate. The statewide probation failure rate shall be calculated as the total number of adult felony probationers statewide sent to prison in the previous year as a percentage of the statewide adult felony probation population as of June 30 of that year.

(c) A probation failure rate for each county. Each county's probation failure rate shall be calculated as the number of adult felony probationers sent to prison from that county in the previous year as a percentage of the county's adult felony probation population as of June 30 of that year.

(d) An estimate of the number of adult felony probationers each county successfully prevented from being sent to prison. For each county, this estimate shall be calculated based on the reduction in the county's probation failure rate as calculated annually pursuant to subdivision (c) of this section and the county's baseline probation failure rate as calculated pursuant to Section 1233. In making this estimate, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the

Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the period 2006 to 2008, inclusive.

(e) In calculating probation failure rates for the state and individual counties, the number of adult felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison for conviction of a new crime and who simultaneously have their probation terms terminated.

1233.2. Annually, after the conclusion of each calendar year, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall identify the appropriate Probation Revocation Tier for each county for which it was estimated that the county successfully prevented any number of adult felony probationers from being sent to state prison, as provided in subdivision (d) of Section 1233.1. The tiers shall be defined as follows:

(a) Tier 1. A Tier 1 county is one which has a probation failure rate, as defined in subdivision (c) of Section 1233.1, that is no more than 25 percent higher than the statewide probation failure rate, as defined in subdivision (b) of Section 1233.1.

(b) Tier 2. A Tier 2 county is one which has a probation failure rate, as defined in subdivision (c) of Section 1233.1, that is more than 25 percent above the statewide probation failure rate, as defined in subdivision (b) of Section 1233.1.

1233.3. Annually, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate a probation failure reduction incentive payment for each eligible county, pursuant to Section 1233.2, for the most recently completed calendar year, as follows:

(a) For a county identified as being in Tier 1, as defined in subdivision (a) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being sent to prison, as defined by subdivision (d) of Section 1233.1, multiplied by 45 percent of the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(b) For a county identified as being in Tier 2, as defined in subdivision (b) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being sent to prison, as defined by subdivision (d) of Section 1233.1, multiplied by 40 percent of the costs to the state to incarcerate in prison and

supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

1233.4. (a) It is the intent of the Legislature for counties demonstrating high success rates with adult felony probationers to have access to performance-based funding, as provided for in this section.

(b) On an annual basis, the Department of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate 5 percent of the savings to the state attributed to those counties that successfully reduce the number of adult felony probationers sent to state prison.

(c) The savings estimated pursuant to subdivision (b) shall be used to provide high performance grants to county probation departments for the purpose of bolstering evidence-based probation practices designed to reduce recidivism among adult felony probationers.

(d) County probation departments eligible for these high performance grants shall be those with adult probation failure rates more than 50 percent below the statewide average in the most recently completed calendar year.

(e) A county probation department may receive a high performance grant under this section in a year in which it does not also receive a probation failure reduction incentive payment as provided for in Section 1233.3. The CPO of a county that qualifies for both a high performance grant and a probation failure reduction incentive payment shall indicate to the Administrative Office of the Courts, by a date designated by the Administrative Office of the Courts, whether the CPO chooses to receive the high performance grant or probation failure reduction payment.

(f) The grants provided for in this section shall be administered by the Administrative Office of the Courts. The Administrative Office of the Courts shall seek to ensure that all qualifying probation departments that submit qualifying applications receive a proportionate share of the grant funding available based on the population of adults ages 18 to 25, inclusive, in each of the counties receiving the grants.

1233.5. If data of sufficient quality and of the types required for the implementation of this act are not available to the Director of Finance, then the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, and the Administrative Office of the Courts, shall use the best available data to estimate probation failure reduction incentive payments and high performance grants utilizing a methodology that is as consistent with that described in this act as is reasonably possible.

1233.6. (a) Probation failure reduction incentive payments and high performance grants calculated for any calendar year shall be provided to counties in the following fiscal year. The total annual payment to each county shall be divided into four equal quarterly payments.

(b) The Department of Finance shall include an estimate of the total probation failure reduction incentive payments and high performance grants to be provided to counties in the coming fiscal year as part of the Governor's

proposed budget released no later than January 10 of each year. This estimate shall be adjusted by the Department of Finance, as necessary, to reflect the actual calculations of probation revocation incentive payments and high performance grants completed by the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts. This adjustment shall occur as part of standard budget revision processes completed by the Department of Finance in April and May of each year.

(c) There is hereby established a State Community Corrections Performance Incentives Fund. Moneys budgeted for purposes of providing probation revocation incentive payments and high performance grants authorized in Sections 1230 to 1233.6, inclusive, shall be deposited into this fund. Any moneys deposited into this fund shall be administered by the Administrative Office of the Courts and the share calculated for each county probation department shall be transferred to its Community Corrections Performance Incentives Fund authorized in Section 1230. The Legislature may allocate up to 3 percent of the funds annually deposited into the State Community Corrections Performance Incentives Fund for use by the Administrative Office of the Courts for the costs of administering this program.

1233.7. The moneys appropriated pursuant to this chapter shall be used to supplement, not supplant, any other state or county appropriation for the chief probation officer or the probation department.

1233.8. This chapter shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 37. Section 2932 of the Penal Code is amended to read:

2932. (a) (1) For any time credit accumulated pursuant to Section 2931 or to Section 2933, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1), which could be prosecuted as a felony whether or not prosecution is undertaken.

(3) Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken.

(4) Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections. Any person confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for the act of misconduct or 180 days, whichever is less. Any person confined in a secure housing unit for having committed any misconduct specified in paragraph (1) in which great bodily injury is inflicted upon a nonprisoner shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for that act of misconduct. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the Director of Corrections finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon a hearing and finding by the director.

The prisoner may appeal the decision through the department's review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct described by the Department of Corrections as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic, or other prison activity shall be deemed a failure to participate.

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections for serious disciplinary infractions if those procedures are not in conflict with this section.

(1) (A) The Department of Corrections shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the Director of Corrections. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at the hearing. The hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) The Department of Corrections may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.

(iv) The warden of the institution approves of the delay in writing.

The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.

(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation, or presentation of a defense at the disciplinary hearing if it is determined by the department that: (i) the prisoner is illiterate; or (ii) the complexity of the issues or the prisoner's confinement status makes it unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. The specific reasons shall be set forth in writing and a copy of the document shall be presented to the prisoner.

(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner may be found guilty on the basis of a preponderance of the evidence.

(d) If found guilty the prisoner shall be advised in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of time-credit loss. The prisoner may appeal the decision through the Department of Corrections' review procedure, and may, upon final notification of appeal denial, within 15 days of the notification demand review of the department's denial of credit to the Board of Prison Terms, and the board may affirm, reverse, or modify the department's decision or grant a hearing before the board at which hearing the prisoner shall have the rights specified in Section 3041.5.

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his or her anticipated time-credit release date. The prisoner shall be notified of any change in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

(f) If the conduct the prisoner is charged with also constitutes a crime, the Department of Corrections may refer the case to criminal authorities for possible prosecution. The department shall notify the prisoner, who may request postponement of the disciplinary proceedings pending the referral.

The prisoner may revoke his or her request for postponement of the disciplinary proceedings up until the filing of the accusatory pleading. In the event of the revocation of the request for postponement of the proceeding, the department shall hold the hearing within 30 days of the revocation.

Notwithstanding the notification requirements in this paragraph and subparagraphs (A) and (B) of paragraph (1) of subdivision (c), in the event the case is referred to criminal authorities for prosecution and the authority requests that the prisoner not be notified so as to protect the confidentiality of its investigation, no notice to the prisoner shall be required until an accusatory pleading is filed with the court, or the authority notifies the warden, in writing, that it will not prosecute or it authorizes the notification of the prisoner. The notice exceptions provided for in this paragraph shall only apply if the criminal authority requests of the warden, in writing, and within the 15 days provided in subparagraph (A) of paragraph (1) of subdivision (c), that the prisoner not be notified. Any period of delay of notice to the prisoner shall not exceed 30 days beyond the 15 days referred to in subdivision (c). In the event that no prosecution is undertaken, the procedures in subdivision (c) shall apply, and the time periods set forth in that subdivision shall commence to run from the date the warden is notified in writing of the decision not to prosecute. In the event the authority either cancels its requests that the prisoner not be notified before it makes a decision on prosecution or files an accusatory pleading, the provisions of this paragraph shall apply as if no request had been received, beginning from the date of the cancellation or filing.

In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections shall not deny time credit where the prisoner is found not guilty and may deny credit if the prisoner is found guilty, in which case the procedures in subdivision (c) shall not apply.

(g) If time credit denial proceedings or criminal prosecution prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect the granting or revocation of credits attributable to that portion of the prisoner's sentence served prior to January 1, 1983.

SEC. 38. Section 2933 of the Penal Code is amended to read:

2933. (a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Secretary of the Department of Corrections and Rehabilitation pursuant to this section and Section 2933.05.

(b) For every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser

period of continuous incarceration. Credit should be awarded pursuant to regulations adopted by the secretary. Prisoners who are denied the opportunity to earn credits pursuant to subdivision (a) of Section 2932 shall be awarded no credit reduction pursuant to this section. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(c) Credit is a privilege, not a right. Credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Except as provided in subdivision (a) of Section 2932, every eligible prisoner shall have a reasonable opportunity to participate.

(d) Under regulations adopted by the Department of Corrections and Rehabilitation, which shall require a period of not more than one year free of disciplinary infractions, credit which has been previously forfeited may be restored by the secretary. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited as specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections and Rehabilitation may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the secretary. However, in any case in which credit was forfeited for a serious disciplinary infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the secretary.

The prisoner may appeal the finding through the Department of Corrections and Rehabilitation's review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(e) A prisoner sentenced to the state prison under Section 1170 shall receive one day of credit for every day served in a county jail, city jail, industrial farm, or road camp after the date he or she was sentenced to the state prison as specified in subdivision (f) of Section 4019.

(f) The provisions of subdivision (d) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

SEC. 39. Section 2933.05 is added to the Penal Code, to read:

2933.05. (a) In addition to any credit awarded pursuant to Section 2933, the department may also award a prisoner program credit reductions from his or her term of confinement as provided in this section. Within 90 days of the enactment of this section, the secretary shall promulgate regulations that provide for credit reductions for inmates who successfully complete specific program performance objectives for approved rehabilitative programming ranging from credit reduction of not less than one week to credit reduction of no more than six weeks for each performance milestone. Regulations promulgated pursuant to this subdivision shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-prison rehabilitation program. Commencing upon the promulgation of those regulations, the department shall thereafter calculate and award credit reductions authorized by this section. However, a prisoner may not have his or her term of imprisonment reduced more than six weeks for credits awarded pursuant to this section during any 12-month period of continuous confinement.

(b) Program credit is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security and available resources. Assignments made to program credit qualifying programs shall be made in accordance with the prisoner's case plan, when available.

(c) As used in this section, "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, and core programs such as anger management and social life skills, and substance abuse programs.

(d) Credits awarded pursuant to this section may be forfeited pursuant to the provisions of Section 2932. Inmates shall not be eligible for program credits that result in an inmate overdue for release.

(e) The following prisoners shall not be eligible for program credits pursuant to this section:

(1) Any person serving a term of imprisonment for an offense specified in subdivision (c) of Section 667.5.

(2) Any person sentenced to state prison pursuant to Section 1170.12 or subdivisions (b) to (i), inclusive, of Section 667.

(3) Any person required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(4) Any person serving a term of imprisonment as a result of a violation of parole without a new term.

SEC. 40. Section 2933.2 of the Penal Code is amended to read:

2933.2. (a) Notwithstanding Section 2933.1 or any other law, any person who is convicted of murder, as defined in Section 187, shall not accrue any credit, as specified in Section 2933 or Section 2933.05.

(b) The limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law.

(c) Notwithstanding Section 4019 or any other provision of law, no credit pursuant to Section 4019 may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest for any person specified in subdivision (a).

(d) This section shall only apply to murder that is committed on or after the date on which this section becomes operative.

SEC. 41. Section 2933.3 of the Penal Code is amended to read:

2933.3. (a) Notwithstanding any other law, any inmate assigned to a conservation camp by the Department of Corrections and Rehabilitation, who is eligible to earn one day of credit for every one day of incarceration pursuant to Section 2933 shall instead earn two days of credit for every one day of service. The enhanced credit authorized pursuant to this subdivision shall only apply to those prisoners eligible after January 1, 2003.

(b) Notwithstanding any other law, any inmate who has completed training for assignment to a conservation camp or to a correctional institution as an inmate firefighter or who is assigned to a correctional institution as an inmate firefighter and who is eligible to earn one day of credit for every one day of incarceration pursuant to Section 2933 shall instead earn two days of credit for every one day served in that assignment or after completing that training.

(c) In addition to credits granted pursuant to subdivision (a) or (b), inmates who have successfully completed training for firefighter assignments shall receive a credit reduction from his or her term of confinement pursuant to regulations adopted by the secretary.

(d) The credits authorized in subdivisions (b) and (c) shall only apply to inmates who are eligible after July 1, 2009.

SEC. 42. Section 2933.4 of the Penal Code is amended and renumbered to read:

3050. (a) Notwithstanding any other provision of law, any inmate under the custody of the Department of Corrections and Rehabilitation who is not currently serving and has not served a prior indeterminate sentence or a sentence for a violent felony, a serious felony, or a crime that requires him or her to register as a sex offender pursuant to Section 290, who has successfully completed an in prison drug treatment program, upon release from state prison, shall, whenever possible, be entered into a 150-day residential aftercare drug treatment program sanctioned by the department.

(b) As a condition of parole, if the inmate successfully completes 150 days of residential aftercare treatment, as determined by the Department of Corrections and Rehabilitation and the aftercare provider, the parolee shall be discharged from parole supervision at that time.

(c) Commencing with 2008, the department shall report annually to the Joint Legislative Budget Committee and the State Auditor on the effectiveness of these provisions, including recidivism rates.

SEC. 43. Section 2933.5 of the Penal Code is amended to read:

2933.5. (a) (1) Notwithstanding any other law, every person who is convicted of any felony offense listed in paragraph (2), and who previously

has been convicted two or more times, on charges separately brought and tried, and who previously has served two or more separate prior prison terms, as defined in subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2), shall be ineligible to earn credit on his or her term of imprisonment pursuant to this article.

(2) As used in this subdivision, "felony offense" includes any of the following:

(A) Murder, as defined in Sections 187 and 189.

(B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

(C) Mayhem as defined in Section 203.

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

(E) Kidnapping, as defined in Section 207, 209, or 209.5.

(F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as described in Section 244.

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

(H) Sodomy by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 286.

(I) Sodomy while voluntarily acting in concert, as described in subdivision (d) of Section 286.

(J) Lewd or lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288.

(K) Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 288a.

(L) Continuous sexual abuse of a child, as described in Section 288.5.

(M) Sexual penetration, as described in subdivision (a) of Section 289.

(N) Exploding a destructive device or explosive with intent to injure, as described in Section 12303.3, with intent to murder, as described in Section 12308, or resulting in great bodily injury or mayhem, as described in Section 12309.

(O) Any felony in which the defendant personally inflicted great bodily injury, as provided in Section 12022.53 or 12022.7.

(b) A prior conviction of an offense listed in subdivision (a) shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law.

(c) This section shall apply whenever the present felony is committed on or after the effective date of this section, regardless of the date of commission of the prior offense or offenses resulting in credit-earning ineligibility.

(d) This section shall be in addition to, and shall not preclude the imposition of, any applicable sentence enhancement terms, or probation ineligibility and habitual offender provisions authorized under any other section.

SEC. 44. Section 2933.6 of the Penal Code is amended to read:

2933.6. (a) Notwithstanding any other law, a person who is placed in a Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or an Administrative Segregation Unit for misconduct described in subdivision (b) or upon validation as a prison gang member or associate is ineligible to earn credits pursuant to Section 2933 or 2933.05 during the time he or she is in the Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or the Administrative Segregation Unit for that misconduct.

(b) This section applies to the following offenses:

(1) Murder, attempted murder, and solicitation of murder. For purposes of this paragraph, solicitation of murder shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Manslaughter.

(3) Assault or battery causing serious bodily injury.

(4) Assault or battery on a peace officer or other nonprisoner which results in physical injury.

(5) Assault with a deadly weapon or caustic substance.

(6) Rape, attempted rape, sodomy, attempted sodomy, oral copulation, or attempted oral copulation accomplished against the victim's will.

(7) Taking a hostage.

(8) Escape or attempted escape with force or violence.

(9) Escape from any departmental prison or institution other than a camp or reentry facility.

(10) Possession or manufacture of a deadly weapon or explosive device.

(11) Arson involving damage to a structure.

(12) Possession of flammable, explosive material with intent to burn any structure or property.

(13) Solicitation of assault with a deadly weapon or assault by means of force likely to produce great bodily injury, arson, or a forcible sex act.

(14) Intentional destruction of state property in excess of four hundred dollars ($400) during a riot or disturbance.

(c) This section does not apply if the administrative finding of the misconduct is overturned or if the person is criminally prosecuted for the misconduct and is found not guilty.

SEC. 45. Section 2934 of the Penal Code is amended to read:

2934. Under rules prescribed by the Secretary of the Department of Corrections and Rehabilitation, a prisoner subject to the provisions of Section 2931 may waive the right to receive time credits as provided in Section 2931 and be subject to the provisions of Section 2933. In order to exercise a waiver under this section, a prisoner must apply in writing to the Department of Corrections. A prisoner exercising a waiver under this section shall retain only that portion of good behavior and participation credits, which have not been forfeited pursuant to Section 2932, attributable to the portion of the sentence served by the prisoner prior to the effective date of the waiver. A waiver under this section shall, if accepted by the department, become effective at a time to be determined by the Secretary of the Department of Corrections and Rehabilitation.

SEC. 46. Section 2935 of the Penal Code is amended to read:

2935. Under the guidelines prescribed by the rules and regulations of the director, the Secretary of the Department of Corrections and Rehabilitation may grant up to 12 additional months of reduction of the sentence to a prisoner who has performed a heroic act in a life-threatening situation, or who has provided exceptional assistance in maintaining the safety and security of a prison.

SEC. 47. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the effective supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, or as otherwise provided in this article.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department.

This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Parole Hearings shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

SEC. 48. Section 3000.03 is added to the Penal Code, to read:

3000.03. Notwithstanding any other provision of law, the Department of Corrections and Rehabilitation shall not return to prison, place a parole hold on pursuant to Section 3056, or report any parole violation to the Board of Parole Hearings regarding any person to whom all of the following criteria apply:

(a) The person is not required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(b) The person was not committed to prison for a serious felony as defined in Sections 1192.7 and 1192.8, or a violent felony, as defined in Section 667.5, and does not have a prior conviction for a serious felony, as defined in Section 1192.7 and 1192.8, or a violent felony, as defined in Section 667.5.

(c) The person was not committed to prison for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code and does not have a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(d) The person was not found guilty of a serious disciplinary offense, as defined in regulation by the department, during his or her current term of imprisonment.

(e) The person is not a validated prison gang member or associate, as defined in regulation by the department.

(f) The person did not refuse to sign any written notification of parole requirements or conditions, including, but not limited to, the written notification of requirements pursuant to Section 3067.

(g) The person was evaluated by the department using a validated risk assessment tool and was not determined to pose a high risk to reoffend.

SEC. 49. Article 2.3 (commencing with Section 3015) is added to Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:

Article 2.3. Parole Reentry Accountability Program

3015. (a) The Secretary of the Department of Corrections and Rehabilitation shall establish a parole reentry accountability program for parolees who have been sentenced to a term of imprisonment under Section 1170. The purpose of the program is to promote public safety, hold parolees accountable, and reduce recidivism.

(b) The department shall employ a parole violation decisionmaking instrument to determine the most appropriate sanctions for these parolees who violate their conditions of parole.

(1) For purposes of this subdivision, a "parole violation decisionmaking instrument" means a standardized tool that provides ranges of appropriate

sanctions for parole violators given relevant case factors, including, but not limited to, offense history, risk of reoffense based on a validated risk assessment tool, need for treatment services, the number and type of current and prior parole violations, and other relevant statutory requirements.

(2) The department shall adopt emergency regulations to implement this section initially, and shall subsequently adopt permanent regulations that make appropriate changes in policies and procedures to reflect the intent of this section.

(c) The secretary shall have the discretion to establish additional tools and standards to further the purposes of this section.

(d) Parolees subject to this program with a history of substance abuse or mental illness who violate their conditions of parole may be referred by the department to a reentry court program established pursuant to subdivision (e).

(1) A parolee who is deemed eligible by the department to participate in a reentry court program may be referred by his or her parole officer for participation in the program. The court shall have the discretion to determine if the parolee will be admitted into the program and, in making this determination, shall consider, among other factors, whether the parolee will benefit from the program, the risk the parolee poses to the community, and the history and nature of the committing offense.

(2) If the court determines that the parolee will be admitted into the program, the court, with the assistance of the parolee's parole agent, shall have exclusive authority to determine the appropriate conditions of parole, order rehabilitation and treatment services to be provided, determine appropriate incentives, order appropriate sanctions, lift parole holds, and hear and determine appropriate responses to alleged violations, unless and until the court terminates the parolee's enrollment in the program authorized by subdivision (e).

(3) A reentry court program plan shall include, but not be limited to, all of the following:

(A) The anticipated number of parolees who will be served by the program.

(B) The method by which each parolee who is eligible for the program shall be referred to the program.

(C) The method by which each parolee is to be individually assessed as to his or her treatment and rehabilitative needs and the level of community and court monitoring required by the program.

(D) The criteria for continued participation in, and successful completion of, the program, as well as the criteria for termination from the program and referral to the parole revocation process.

(E) A description of how the program shall be administered effectively.

(F) An established method by which to report outcome measures for program participants.

(G) The development of a program team, as well as a plan for ongoing training in utilizing the drug court and collaborative court nonadversarial model.

(e) (1) Subject to funding made available for this purpose, the secretary shall enter into a memorandum of understanding with the Administrative Office of the Courts for the purpose of the establishment and operation of parolee reentry court programs. Only courts with existing drug and mental health courts or courts that otherwise demonstrate leadership and a commitment to conduct the reentry court authorized by this section may participate in this program. These parolee reentry court programs shall, with the assistance of the parolee's parole agent, direct the treatment and supervision of parolees who would benefit from community drug treatment or mental health treatment. The purpose of reentry court programs created pursuant to this subdivision is to promote public safety, hold parolees accountable, and reduce recidivism. The program shall include key components of drug and collaborative courts using a highly structured model, including close supervision and monitoring, dedicated calendars, nonadversarial proceedings, frequent drug and alcohol testing, and close collaboration between the respective entities involved to improve the parolee's likelihood of success on parole.

(2) The Judicial Council, in collaboration with the department, shall design and perform an evaluation of the program that will assess its effectiveness in reducing recidivism among parolees and reducing parole revocations.

(3) The Judicial Council, in collaboration with the department, shall submit a final report of the findings from its evaluation of the program to the Legislature and the Governor no later than 3 years after the establishment of a reentry court pursuant to this section.

SEC. 50. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) (1) Except as provided in Section 2933.1 and paragraph (2), subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section,

one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(2) If the prisoner is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5, subject to the provisions of subdivision (d), for each six-day period in which the prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) (1) Except as provided in Section 2933.1 and paragraph (2), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(2) If the prisoner is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5, for each six-day period in which the prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless is appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of four days or longer, or six days or longer for persons described in paragraph (2) of subdivision (b) or (c).

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody, except that a term of six days will be deemed to have been served for every four days spent in actual custody for persons described in paragraph (2) of subdivision (b) or (c).

SEC. 51. Section 4600 of the Penal Code is amended to read:

4600. (a) Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a fine not exceeding ten thousand dollars ($10,000), and by imprisonment in the state prison, except that where the damage or injury to any city, city and county, or county jail property or prison property is determined to be nine hundred fifty dollars ($950) or less, that person is guilty of a misdemeanor.

(b) In any case in which a person is convicted of violating this section, the court may order the defendant to make restitution to the public entity that owns the property damaged by the defendant. The court shall specify in the order that the public entity that owns the property damaged by the defendant shall not enforce the order until the defendant satisfies all outstanding fines, penalties, assessments, restitution fines, and restitution orders.

SEC. 52. Section 14591 of the Public Resources Code is amended to read:

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for each subsequent separate violation per day.

(b) (1) Every person who, with intent to defraud, takes any of the following actions is guilty of fraud:

(A) Submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5.

(B) Fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550.

(C) Fails to make payments as required by Section 14574.

(D) Redeems out-of-state containers, rejected containers, line breakage, or containers that have already been redeemed.

(E) Returns redeemed containers to the marketplace for redemption.

(F) Brings out-of-state containers, rejected containers, or line breakage to the marketplace for redemption.

(G) Submits a false or fraudulent claim for handling fee payments pursuant to Section 14585.

(2) If the money obtained or withheld pursuant to paragraph (1) exceeds nine hundred fifty dollars ($950), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld pursuant to paragraph (1) equals, or is less than, nine hundred fifty dollars ($950), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) For purposes of this section and Chapter 8.5 (commencing with Section 14595), "line breakage" and "rejected container" have the same meanings as defined in the regulations adopted or amended by the department pursuant to this division.

SEC. 53. Section 41955 of the Public Resources Code is amended to read:

41955. If the value of the stolen material is more than fifty dollars ($50), but less than nine hundred fifty dollars ($950), a violation of this part may be charged as either a misdemeanor or an infraction. A violation after a second conviction within a 12-month period shall be charged as a misdemeanor punishable pursuant to Section 19 of the Penal Code.

SEC. 54. Section 10851.5 of the Vehicle Code is amended to read:

10851.5. Any person who takes binder chains, required under regulations adopted pursuant to Section 31510, having a value of nine hundred fifty dollars ($950) or less which chains are not his own, without the consent of the owner thereof, and with intent either permanently or temporarily to deprive the owner thereof of his title to or possession of the binder chains whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in the unauthorized taking or stealing is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than six months or by a fine of not less than one thousand dollars ($1,000) or by both such fine and imprisonment. The consent of the owner of the binder chain to its taking shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking of the binder chain by the same or a different person.

SEC. 55. Section 42002.4 of the Vehicle Code is amended to read:

42002.4. A violation of Section 10751 shall be punished by imprisonment in the county jail not exceeding six months if the value of the property does not exceed nine hundred fifty dollars ($950), and by imprisonment in the county jail not exceeding one year if the value of the property is more than nine hundred fifty dollars ($950).

SEC. 56. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false

identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is nine hundred fifty dollars ($950) or less, by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than nine hundred fifty dollars ($950), by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Supplemental Nutrition Assistance Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Any person who knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113

and all amendments thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) (1) is guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is nine hundred fifty dollars ($950) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) is guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds nine hundred fifty dollars ($950), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 57. Section 15656 of the Welfare and Institutions Code is amended to read:

15656. (a) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

EXHIBIT D

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF SCOTT KERNAN IN SUPPORT OF DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, SCOTT KERNAN, declare as follows:

1. I am Undersecretary of Operations for the California Department of Corrections and Rehabilitation ("CDCR"). I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. As a 26 year employee of the CDCR, I have a deep understanding of the state prison system operations. As the Undersecretary of Operations, I am responsible for oversight of both adult and juvenile institutions and parole operations, as well as the Board of Parole Hearings, Office of Correctional Safety, and the Prison Industry Authority. Before becoming the Undersecretary, I held the positions of Chief Deputy Secretary, Adult Operations, and Deputy Director and Director of the Division of Adult Institutions. In these positions, I was responsible for all aspects of the day-to-day operations of the adult prisons and parole.

3. CDCR's Offender Information Services Branch (OISB) compiles and retains summary statistical information about inmates and parolees. As described below, CDCR was able to estimate the reductions associated with proposed measures included in Defendants' November 12, 2009 Response to the Court's October 21, 2009 Order to Reduce Prison Population to 137.5% of Design Capacity (Defendants' Response) by utilizing information contained within OISB's data warehouse.

4. **California's Out-of-State Correctional Facility Expansion.** Defendants will expand the California Out-of-State Correctional Facility (COCF) program, whose primary purpose is to remove non-traditional beds and relieve crowding by transferring CDCR inmates to contract out-of-state facilities. Beginning approximately February 2010, COCF will expand at existing out-of-state locations to up to 2,416 new Level III beds. By approximately January 2011, CDCR anticipates housing a total of 10,468 inmates at out-of-state facilities.

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5. **Community Correctional Facilities Utilization.** Defendants will better utilize existing private Community Correctional Facilities (CCFs) to assist in the prison population reduction. CDCR established 13 CCFs throughout California to house low-level inmates. CCFs have been underutilized in the past, in part, because appropriate male inmates are also eligible for other types of housing, including minimum security facilities and camps. Yet, there is an abundance of female inmates who are eligible for placement into these facilities. Accordingly, CDCR is in the process of closing three of these male facilities and sent out requests for proposals to convert these three facilities to house medium security females instead of low security males. Defendants estimate this program will net an approximate 800 inmates reduction by December 31, 2011.

6. **Additional California Out-of-State Correctional Facility Expansion.** In addition to the 2,416 bed expansion set forth above, State Defendants will work with the Legislature to remove the existing clause that calls for the termination of the out-of-state program in 2011. With this legislative change, or with a federal waiver of state law, Defendants estimate they will be able to expand the out-of-state program by approximately 1,500 beds by December 31, 2011 reducing its in-state population by that amount.

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7. **House Inmates in Private Facilities.** An additional possible method to reduce the population to 137.5% of design capacity is to rapidly increase the number of available prison beds by expediting leasing, building, and/or operating new beds through establishment of private vendor contracts to house inmates and operate private correctional facilities in the State. If necessary waivers were obtained, it is estimated that CDCR could build, lease or contract for facilities for private vendors and reduce the population at the existing 33 adult institutions by 5,000 by December 31, 2011.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California on November 12, 2009.

SCOTT KERNAN

EXHIBIT E

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF SHARON AUNGST IN SUPPORT OF DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, SHARON AUNGST, declare as follows:

1. I am the Chief Deputy Secretary of the Division of Correctional Health Care Services (DCHCS) for the California Department of Corrections and Rehabilitation (CDCR). I began working as Chief Deputy Secretary on February 9, 2009. I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. I have worked in the mental health care profession for over 30 years. From 1995 to 1998, I worked for the Ohio Department of Rehabilitation and Correction (ODRC). During my tenure with the ODRC, I was responsible for fulfilling major requirements for the termination of a federal class action concerning the constitutional adequacy of the mental health care provided to state inmates. *Dunn v. Voinovich*, No. C1-93-0166 (Ohio Dist. Ct.).

3. In my current role as Chief Deputy Secretary of DCHCS, I am responsible for the management and oversight of the health care services division of CDCR which includes the mental health and dental programs.

4. As the Chief Deputy Secretary of DCHCS, I am aware of those budget reductions that have been announced or implemented in 2009 and that affect CDCR's provision of mental health services to *Coleman* class members.

5. CDCR and the *Plata* Receiver coordinate and work collaboratively on a number of issues related to the day-to-day provision of healthcare to California's inmate-patients. However, because the *Plata* Receiver is charged with the management and provision of medical care to California's inmate-patients, the Receiver's Office is most qualified to provide information regarding how, if at all, any budget reductions have meaningfully affected the provision of medical services to California's inmate-patients.

6. With respect to mental health services, I do not believe based on my current understanding of the budget reductions that the reductions will meaningfully impact the provision of mental health care to California's inmate-patients. However,

CDCR's reduced budget may affect CDCR's ability to comply with certain *Coleman* program guide requirements. For example, CDCR is required to provide a minimum of ten hours of out-of-cell structured therapeutic activity for every EOP inmate-patient per week. The reduction in rehabilitation programs, including educational, substance abuse treatment, pre-vocational and vocational programs associated with the recent budget reduction may have an adverse impact on the provision of weekly out-of-cell structured therapeutic activity for EOP level inmate-patients. It is unclear at this time whether and to what extent these cuts may impact compliance with the *Coleman* program guide requirements.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California on November 12, 2009.

SHARON AUNGST

EXHIBIT F

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF ROBERT AMBROSELLI IN SUPPORT OF DEFENDANTS' RESPONSE TO THREE-JUDGE COURT'S OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, ROBERT AMBROSELLI, declare as follows:

1. I have been employed by the California Department of Corrections and Rehabilitation for 19 years. I currently hold the position of Acting Director, Division of Adult Parole Operations (DAPO) and have held this position since August 1, 2009. Prior to that, I was Deputy Director of DAPO. I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. As Acting Director of DAPO, I am familiar with CDCR's reentry and diversionary programs. DAPO's Program Development Unit developed and administers numerous community-based programs to enhance public safety and assist parolees in the reintegration process. These programs provide critical services such as housing, sustenance, literacy labs/GED preparation, substance abuse counseling/treatment, job readiness/placement assistance, life skills training, domestic violence counseling, group and family counseling, and victim awareness training. The programs are designed to meet the needs of parolees with a high risk to re-offend and are used in lieu of incarceration as intermediate/remedial sanctions for parolees who violate their parole. The programs include the following: Residential-Multi Service Centers, Parolee Service Centers, Day Reporting Centers, Community-Based Coalition Program, Computerized Literacy Learning Center, and Substance Abuse Treatment and Recovery Program.

3. The Residential-Multi Service Centers program provides housing for homeless and at-risk parolees. This 180-day program offers a variety of services to male and female parolees that include drug counseling, literacy training, job preparation/placement, anger management classes, and individual and group counseling. This program served 2,329 parolees from January 2009 through September 2009.

4. The Parolee Service Centers program provides residential programs to parolees who are in need of various resources including: employment, substance abuse,

stress management, victim awareness, computer literacy, life skills, and a 52-week domestic violence class. This program served 3,202 parolees from January 2009 through September 2009.

5. The Day Reporting Centers program provides services such as cognitive life skills, anger management, employment assistance, educational services, budgeting and money management, family reunification, substance abuse counseling, participation in community services, job readiness and job search assistance. This program served 2,006 parolees from January 2009 through September 2009.

6. The Community-Based Coalition program provides residential and transitional housing, substance abuse education and treatment, anger management strategies, domestic violence prevention and awareness, cognitive and life skills development, parenting and family reintegration, participation in community service, educational service, budgeting and money management, job readiness and job search assistance, and sober living. This program served 1,466 parolees from January 2009 through September 2009.

7. The Computerized Literacy Learning Center is a computer-assisted instructional program located at 21 parole offices statewide. It is designed to increase the literacy skills of parolees, resulting in increased employability and parolee success. This program served 2,114 parolees from January 2009 through September 2009.

8. The Substance Abuse Treatment and Recovery program is an education-based program located at 29 parole offices statewide. It is designed to provide substance abuse and relapse prevention instruction to parolees that are in need of substance abuse education. This program served 7,332 parolees from January 2009 through September 2009.

9. In sum, these programs described in paragraphs 3 through 8 above have served a combined 18,449 participants from January 2009 through September 2009. The 18,449 figure, however, does not reflect the fact that a parolee may have participated in more than one program, or that a parolee may have been discharged

from a program and subsequently re-enrolled back into the same program or into a different program.

10. Additionally, DAPO's Program Development Unit is in the process of establishing four additional sites for the Day Reporting Center program, described above. These four additional sites will add an additional 1,200 community-based program slots.

11. Due to the State's fiscal crisis and CDCR's budget deficit, DAPO is looking at a potential $41 million reduction in current year program funds. This reduction will be achieved by delaying the activation of new program sites until Fiscal Year 2010/11 and does not envision the closure of current programs. However, due to the budget deficit/reduced funding, the implementation of other new programs is not being considered at this time.

12. Diversionary programs help DAPO ensure and enhance public safety. In addition to their regular parole agent supervision, participating parolees are placed in a structured environment with either 24-hour supervision (in residential facilities such as the Residential-Multi Service Centers or Parolee Service Centers) or subjected to greatly increased supervision in programs provided in parole offices (such as the Substance Abuse Treatment and Recovery program and the Computerized Literacy Learning Center program) and programs where parole staff are assigned (such as the Day Reporting Centers and the Community-Based Coalition program). The parolees' needs are assessed by program staff and the parolees are provided with individual treatment plans that address their criminogenic needs.

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13. While these are CDCR-funded and supported programs, these programs impact the same population to be served by the counties and other community-level providers. This provides assistance and support to the communities.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Bakersfield, California on November 12, 2009.

ROBERT AMBROSELLI

EXHIBIT G

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
DANIELLE F. O'BANNON
KYLE A. LEWIS – State Bar No. 201041
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Facsimile: (415) 703-5843
kyle.lewis@doj.ca.gov

Attorneys for Defendants

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. WOLFF – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
swolff@hansonbridgett.com
rjacob@hansonbridgett.com

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. 2:90-cv-00520 LKK JFM P **THREE-JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	No. C01-1351 TEH **THREE-JUDGE COURT** **DECLARATION OF ELIZABETH SIGGINS IN SUPPORT OF DEFENDANTS' RESPONSE TO OCTOBER 21, 2009 ORDER** **To: Three-Judge Court**

I, ELIZABETH SIGGINS, declare as follows:

1. I am the Acting Chief Deputy Secretary for Adult Programs in the California Department of Corrections and Rehabilitation (CDCR). I have been employed in this position since April 2009. Prior to this, from May 2008 to April 2009, I served as the Senior Policy Advisor to the Secretary. As Acting Chief Deputy Secretary for Adult Programs, I am responsible for the department's education, vocation, and substance abuse programming as well as for our Office of Community Partnerships. I am responsible for determining how to administer the adult program-related funds allocated to the department's budget. I am competent to testify to the matters set forth in this declaration, and if called upon to do so, I would and could so testify. I submit this declaration in support of Defendants' Response to the Three-Judge Court's October 21, 2009 Order.

2. The State's fiscal crisis has resulted in a $250 million reduction to CDCR's budget for adult rehabilitative programs. To compensate for this budget reduction, CDCR has developed a streamlined rehabilitation model which focuses on reducing recidivism and reaching as many offenders as possible with less funding. As this declaration pertains to the measures that the state is taking to support and assist counties and other community-level providers, the focus of this declaration will be only on those services provided in the community and not on the rehabilitative programs provided inside our institutions. To that end, this declaration will discuss community-based services provided through the Office of Substance Abuse Treatment Services, formerly the Division of Addiction and Recovery Services, and the Office of Community Partnerships, formerly the Division of Community Partnerships.

3. While the department is still in the process of implementing the necessary changes to our programs as a result of the budget reductions, we anticipate that the majority of these changes will be in place by early 2010, particularly as they pertain to community-based programs.

4. As of January 2010, on any given day, CDCR will have the capacity to

serve approximately 4,633 parolees in community-based aftercare treatment. This is a reduction of over 5,000 treatment slots from the previously funded amount. It should be noted, however, that based on the average length of stay, which varies based on program design but ranges from 90 days to 180 days or more, the annual capacity is much higher than this. The aftercare treatment programs are delivered to parolees through a network of licensed community-based providers throughout the state using a variety of modalities, including residential treatment, sober living environments, and outpatient facilities. A brief description of CDCR's substance abuse treatment programs is provided below.

5. **Substance Abuse Services Coordination Agency (SASCA) Services.** CDCR contracts with four Substance Abuse Services Coordination Agencies to purchase, deliver, and administer community aftercare services. These programs are designed to reduce the incidence of both relapse and recidivism among participants and to promote pro-social behavior that will enable the participants to exhibit satisfactory conduct within the program and while on parole, leading to their successful integration into the community. The role of the Substance Abuse Services Coordination Agency is to coordinate community-based treatment for parolees. As of January 2010, on any given day, CDCR will have the capacity to serve approximately 1,588 parolees through our SACSA contracts. This is a reduction of over 4,000 treatment slots from the previously funded amount.

6. **Treatment Incentive Program (formerly Senate Bill 1453).** This program was established in Senate Bill 1453 (cited as Penal Code section 2933.4) and signed into law by Governor Schwarzenegger on September 30, 2006, effective January 1, 2007. The purpose of this program is to reduce recidivism, address prison overcrowding, and increase rehabilitation of parolees in the community. This program requires a special condition of parole which allows eligible felons, upon parole, to be voluntarily placed into a 150-day community-based residential drug treatment program. Pursuant to law, upon successful completion of both the in-prison and aftercare

components, eligible offenders are discharged from parole. This program was designed to improve public safety through a corresponding reduction in criminal activity and to provide savings to taxpayers by reducing costs associated with the re-incarceration of offenders. The capacity for this program is incorporated into the SASCA capacity identified above.

7. **In-Custody Drug Treatment Program (ICDTP).** ICDTP is provided to certain parolees who have violated their parole and who agree to participate in a 150-day program in lieu of a parole revocation. Placement into ICDTP requires a parolee to have a nexus to current substance abuse and/or a history of substance abuse-related criminal or violation offenses. There are two ICDTP programs available:

- Program 1 (Jail-Based): In the first phase, the parolee participates in a 60-day, jail-based educational drug treatment program. In the second phase, the parolee receives 30 days of treatment in a residential community-based program. The third phase consists of a residential program, outpatient, sober-living environment, and/or self-help programs such as Alcoholics Anonymous or Narcotics Anonymous.
- Program 2 (Community-Based): Parolees participate in the first phase of treatment in a residential community-based program for a minimum of 90 days. Parolees complete the last 60 days in a residential, outpatient, and/or sober-living environment.

As of January 2010, on any given day, CDCR will have the capacity to serve approximately 1,800 parolees through ICDTP. This program is not experiencing a reduction in capacity as a result of the budget reductions.

8. **Parolee Services Network.** The Parolee Services Network (PSN) provides community alcohol and drug treatment services for eligible parolees (felons and civil addicts). The PSN is a collaborative program among the CDCR, Department of Alcohol and Drug Programs, seventeen county alcohol and drug programs, case management providers, and community-based organizations. The PSN provides a full

array of community-based substance abuse treatment services for parolees in the community who cannot normally use Substance Abuse Services Coordination Agency services. CDCR has an interagency agreement with the Department of Alcohol and Drug Programs for the purpose of administering the PSN. The goal of the PSN is to reduce recidivism and improve parole outcomes as evidenced by reduced alcohol and drug-related parole revocations. It is expected that this program will reduce substance abuse and criminal activity among its participants and encourage a reintegration into society with a clean and sober lifestyle. As of January 2010, on any given day, CDCR will have the capacity to serve approximately 863 parolees through PSN. This program is not experiencing a reduction in capacity as a result of the budget reductions.

9. **Female Offender Treatment and Employment Program (FOTEP).** Senate Bill 491, Chapter 500, Statutes of 1998, Penal Code Section 3054 required CDCR to establish three pilot programs known as FOTEP. The FOTEP provides an opportunity for female offenders to transition from in-prison substance abuse programs to community-based programs. FOTEP focuses on intensive, gender-responsive counseling services to enable female participants to successfully reintegrate into the community. In addition, there is a comprehensive case management component to assess the needs of participants and to provide the services and programs that will most likely result in their recovery and employment success. Unique to the FOTEP is the ability for women to have their children reside with them as they progress through their treatment and recovery for up to 15 months. The goal of FOTEP is to reduce recidivism through intensive substance abuse services, family reunification, vocational training, and employment services. As of January 2010, on any given day, CDCR will have the capacity to serve approximately 412 parolees through FOTEP. While CDCR was originally funded to expand this program in the current fiscal year and it had recently begun this expansion, this capacity is comparable to the FY 2008/09 capacity.

10. In addition to the services discussed above which are provided by the Office of Substance Abuse Treatment Services, CDCR also provides employment

education and job opportunities through our Office of Community Partnerships as described below.

11. **California New Start.** In May 2008, CDCR entered into an Interagency Agreement with the California Workforce Investment Board and local Workforce Investment Boards to initiate California New Start. The program provides parolees with employment education and job opportunities within the communities through direct connection to over 200 local One-Stop Career Centers statewide. Core services, such as job search seminars, individual employment plans, job development workshops, supportive service referrals, employment referrals, and job retention follow-up are available through this program. For FY 2009/10 California New Start has the capacity to serve approximately 80,000 eligible parolees.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California on November 12, 2009.

ELIZABETH SIGGINS