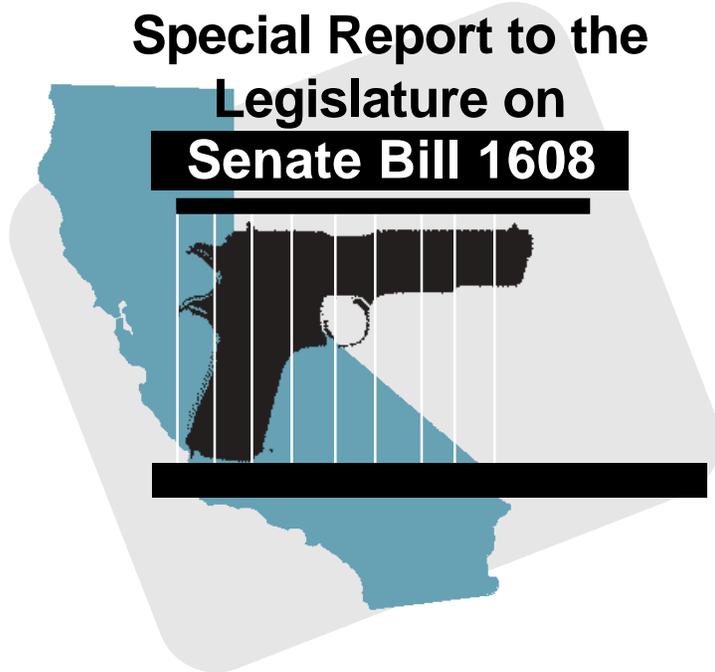


APPENDICES

Special Report to the Legislature on **Senate Bill 1608**



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SENATE BILL NO. 1608

CHAPTER 624

An act to add and repeal Chapter 6.5 (commencing with Section 13855) of Title 6 of Part 4 to the Penal Code, relating to firearms.

[Approved by Governor September 24, 2000.
Filed with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, Brulte. Firearms: possession by felon.

Existing law provides for various studies and programs related to crime prevention and firearms.

This bill would require the Department of Justice to undertake a study regarding specified information in connection with violations of Sections 12021 and 12021.1 of the Penal Code, and to report to the Legislature no later than January 1, 2002. This bill would provide that its provisions shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

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

SECTION 1. Chapter 6.5 (commencing with Section 13855) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 6.5. STUDY OF SECTIONS 12021 AND 12021.1
VIOLATIONS AND ENFORCEMENT

13855. (a) The Department of Justice shall study and report to the Legislature by January 1, 2002, statewide information identifiable by county, about the enforcement of Sections 12021 and 12021.1, including, but not limited to the following, for the period of at least three years prior to January 1, 2001:

(1) The number of arrests for violations of Section 12021 or 12021.1, identified by the number of arrests that were solely for a violation of Section 12021 or 12021.1, and the number of arrests for violations of Section 12021 or 12021.1 and other violations of law.

(2) The number of prosecutions and convictions that were for violations of Section 12021 or 12021.1, identified by the number of prosecutions and convictions that were solely for a violation of Section 12021 or 12021.1, and the number of prosecutions and convictions for violations of Section 12021 or 12021.1 and other violations of law.

(3) The number of persons identified pursuant to paragraphs (1) and (2) who had previous convictions for serious or violent felonies, and the number sentenced pursuant to Sections 1170.12, 12022.5, 12022.53, or subdivisions (b) to (i), inclusive, of Section 667.

(4) The number and lengths, identified as lower, middle, and upper term, of sentences imposed where the sentence imposed for a violation of Section 12021 or 12021.1 was the principal term of imprisonment, and the number of convictions where the sentence imposed for a violation of Section 12021 or 12021.1 was a subordinate term of imprisonment.



(5) The number of persons who were granted probation or suspension of the imposition of sentence for a violation of Section 12021 or 12021.1.

(6) The length of time between the arrest for a violation of Section 12021 or 12021.1 and the previous felony conviction that resulted in the offender being subject to Section 12021 or 12021.1.

(b) This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

CALIFORNIA PENAL CODE
SECTIONS 12021, 12021.1, 667, 1170.12, 12022.5, 12022.53

SECTION 12021

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:



(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is



prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

SECTION 12021.1

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and

who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

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

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a non inmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnaping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Car-jacking.

(29) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or



under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

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

SECTION 667

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

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

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

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

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

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

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

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

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

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

(4) There shall not be a commitment to any other facility other than the state

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

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

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

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

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

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

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

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

(B) The stay of execution of sentence.

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

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

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

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:

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

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

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

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

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any



other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

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

(2) (A) If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

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

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

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

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

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

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

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

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.

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

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

SECTION 1170.12

1170.12. (a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant

has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

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

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

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

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

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

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

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

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

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

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

(B) The stay of execution of sentence.

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

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

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

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and



(B) The prior offense is (i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a felony, and

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

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

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

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

(2) (A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or

(ii) twenty-five years or

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

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

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

SECTION 12022.5

12022.5. (a) (1) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a

felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of car-jacking or attempted car-jacking, the additional term shall be 4, 5, or 10 years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony +or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machine gun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machine gun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machine gun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SECTION 12022.53

12022.53. (a) This section applies to the following felonies:

- (1) Section 187 (murder).
- (2) Section 203 or 205 (mayhem).



- (3) Section 207, 209, or 209.5 (kidnaping).
- (4) Section 211 (robbery).
- (5) Section 215 (car-jacking).
- (6) Section 220 (assault with intent to commit a specified felony).
- (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
- (8) Section 261 or 262 (rape).
- (9) Section 264.1 (rape or sexual penetration in concert).
- (10) Section 286 (sodomy).
- (11) Section 288 or 288.5 (lewd act on a child).
- (12) Section 288a (oral copulation).
- (13) Section 289 (sexual penetration).
- (14) Section 4500 (assault by a life prisoner).
- (15) Section 4501 (assault by a prisoner).
- (16) Section 4503 (holding a hostage by a prisoner).
- (17) Any felony punishable by death or imprisonment in the state prison for life.
- (18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an

enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a co-participant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

APPENDIX III

SERIOUS OR VIOLENT FELONIES

CODE SECTIONS

HS 11353	PC 192.1	PC 213.5	PC 261 (A) (2)	PC 287
HS 11353 (A)	PC 192.3	PC 214	PC 261 (A) (3)	PC 288
HS 11353 (B)	PC 192.3 (A)	PC 215	PC 261 (A) (4)	PC 288 (A)
HS 11353 (C)	PC 192.3 (C)	PC 215 (A)	PC 261 (A) (5)	PC 288 (B)
HS 11353.5	PC 192.3 (D)	PC 217	PC 261 (A) (6)	PC 288 (B) (1)
HS 11353.7	PC 192.5	PC 217.1	PC 261 (A) (7)	PC 288 (B) (2)
HS 11354	PC 192.5 (A)	PC 217.1 (A)	PC 261.1	PC 288 (C)
HS 11354 (A)	PC 192.5 (C)	PC 217.1 (B)	PC 261.2	PC 288 (C) (1)
HS 11380	PC 193	PC 218	PC 261.2/261.3	PC 288 (C) (2)
HS 11380 (A)	PC 193 (A)	PC 219	PC 261.3	PC 288 A
HS 11380.5	PC 193 (C)	PC 220	PC 261.4	PC 288 A (A)
HS 11380.5 (A)	PC 193 (C) (1)	PC 220 /261	PC 261.5	PC 288 A (B)
PC 37	PC 193 (C) (3)	PC 220/261(2)	PC 261.5	PC 288 A (B) (1)
PC 37 (A)	PC 193 (C) (4)	PC 220/264.1	PC 261.5 (A)	PC 288 A (B) (2)
PC 128	PC 203	PC 244	PC 261.5 (C)	PC 288 A (C)
PC 136.1	PC 204	PC 244.5	PC 261.5 (D)	PC 288 A (D)
PC 136.1 (A) (1)	PC 205	PC 244.5 (B)	PC 261.6	PC 288 A (D) (1)
PC 136.1 (A) (2)	PC 206	PC 244.5 (C)	PC 262	PC 288 A (D) (2)
PC 136.1 (B) (1)	PC 207	PC 245	PC 262 (A)	PC 288 A (D) (3)
PC 136.1 (B) (2)	PC 207 (A)	PC 245 (A)	PC 262 (A) (1)	PC 288 A (E)
PC 136.1 (B) (3)	PC 207 (B)	PC 245 (A) (1)	PC 262 (A) (2)	PC 288 A (F)
PC 136.1 (C)	PC 207 (C)	PC 245 (A) (2)	PC 262 (A) (3)	PC 288 A (G)
PC 136.1 (C) (1)	PC 207 (D)	PC 245 (A) (3)	PC 262 (A) (4)	PC 288 A (H)
PC 136.1 (C) (2)	PC 208	PC 245 (B)	PC 262 (A) (5)	PC 288 A (I)
PC 136.1 (C) (3)	PC 208 (B)	PC 245 (C)	PC 264	PC 288 A (J)
PC 136.1 (C) (4)	PC 208 (D)	PC 245 (D) (1)	PC 264.1	PC 288 A (K)
PC 186.22	PC 208 (D)	PC 245 (D) (2)	PC 269 (A) (1)	PC 288.5
PC 186.22 (A)	PC 209	PC 245 (D) (3)	PC 269 (A) (3)	PC 288.5 (A)
PC 664/187	PC 209 (A)	PC 245.2	PC 269 (A) (4)	PC 289
PC 664/192	PC 209 (B)	PC 245.3	PC 269 (A) (5)	PC 289 (A)
PC 187	PC 209 (B) (1)	PC 245.5	PC 273 AB	PC 289 (A) (1)
PC 187 (A)	PC 209.5 (A)	PC 245.5 (A)	PC 286	PC 289 (A) (2)
PC 187/190.2	PC 211	PC 245.5 (B)	PC 286 (A)	PC 289 (B)
PC 189	PC 211 A	PC 245.5 (C)	PC 286 (B) (1)	PC 289 (C)
PC 190	PC 212.5	PC 246	PC 286 (B) (2)	PC 289 (D)
PC 191.5	PC 212.5 (A)	PC 261	PC 286 (C)	PC 289 (E)
PC 191.5 (A)	PC 212.5 (B)	PC 261 (1)	PC 286 (D)	PC 289 (F)
PC 191.5 (B)	PC 212.5 (B)	PC 261 (2)	PC 286 (E)	PC 289 (G)
PC 191.5 (D)	PC 212.5 (C)	PC 261 (2)/264.1	PC 286 (F)	PC 289 (H)
PC 192	PC 213	PC 261 (3)	PC 286 (G)	PC 289 (I)
PC 192 (A)	PC 213 (A) (1) (A)	PC 261 (4)	PC 286 (H)	PC 289 (J)
PC 192 (C)	PC 213 (A) (2)	PC 261 (5)	PC 286 (I)	PC 289.5
PC 192 (C) (1)	PC 213 (B)	PC 261 (6)	PC 286 (J)	PC 422
PC 192 (C) (3)	PC 213.1	PC 261 (7)	PC 286 (K)	PC 422 (A)
PC 192 (C) (4)	PC 213.2	PC 261 (A) (1)	PC 286.1	PC 451

PC 451 (A)	PC 4500	PC 12022 /211	PC 12022.7/459	PC 12310 (B)
PC 451 (B)	PC 4501	PC 12022.3 (A)	PC 12022.8	VC 2800.3
PC 451 (C)	PC 4503	PC 12022.5	PC 12034 (B)	VC 23104 (B)
PC 451 (D)	PC 11418 (B) (1)	PC 12022.5/207	PC 12034 (C)	VC 23153
PC 451 A	PC 12022	PC 12022.5/211	PC 12034 (D)	VC 23153 (A)
PC 451.5 (A) (1)	PC 12022 (A)	PC 12022.5/245 (A)	PC 12303.3	VC 23153 (A) (B)
PC 459	PC 12022 (B)	PC 12022.5/261	PC 12308	VC 23153 (B)
PC 460 (A)	PC 12022 (A)/211	PC 12022.7	PC 12309	VC 23153 (D)
PC 460.1	PC 12022 (B)/207	PC 12022.7/211	PC 12310	
PC 518	PC 12022 (B)/211	PC 12022.7/245 (A)	PC 12310 (A)	

APPENDIX IV

DATA INFORMATION AND LIMITATIONS

- SAS software language was used to format data obtained from the ACHS in June 2001. The SAS language allowed for the complex programming necessary to extract information for this report.
- Court disposition counts may exceed arrest counts for some counties because dispositions can occur in a year other than an arrest, the number of charges filed may exceed the number of arrest charges for an individual, and jurisdictional transfers can occur.
- In the fall of 2001, the Criminal Justice Statistics Center was notified that Los Angeles County had not sent the DOJ 127 tapes (containing approximately 2,000 dispositions per tape) for 1998 through 2000. The number of court dispositions that would have been captured in this report is unknown.
- In 1995, the Sacramento County Superior Court began reporting disposition data on tape files. These tapes are not compatible with the DOJ's data collection system and no parallel program has been implemented to recover their data. The variability in Sacramento County's disposition counts are attributed to this reporting problem.
- A decrease in dispositions in 1999 and 2000 for San Bernardino County is attributed to a termination by the county of its manual reporting process before complete implementation of a new tape reporting system.
- Ventura County has been experiencing technical difficulties with their Automated Tape Disposition Reporting process. The impact on this report is unknown.
- In 2002, Alameda County discovered a programming problem that resulted in the underreporting of final dispositions for approximately four prior years. The impact on this report is unknown.

CJSC* PUBLICATIONS

Annuals

Crime and Delinquency in California**
Crime and Delinquency in California,
Advance Release**
Crime as Reported by Selected California
Agencies, January through September**
Criminal Justice Profile - A Supplement to
C&D (statewide and individual counties)**
Hate Crime in California**
Homicide in California**
Preliminary Report, Crime (January
through June and January through
December)**

BCS Foci and Forums

The California Experience in American
Juvenile Justice: Some Historical
Perspectives (December 1988)
Controlling Plea Bargaining in California
(September 1985)
Coordinating Justice in California: "There
ought to be a law about it" (December
1988)
Crime Control and the Criminal Career
(December 1992)
The Development of California Drunk
Driving Legislation (December 1988)
Employment and Crime (February 1989)
The Impact of California's "Prior Felony
Conviction" Law (September 1987)
The Origins and Development of Penalties
for Drunk Drivers in California (August
1988)
A Policy Role for Focus Groups:
Community Corrections (September
1991)
The Prevalence and Incidence of Arrests
Among Adult Males in California (August
1988)
The Social Structure of Street Drug
Dealing (December 1988)

BCS Outlooks

Adult Felony Arrest Dispositions in
California (1982-1984, 1986-1989)

Crime in Urban and Rural California
(November 1984 and December 1997)**
Felony Drug Arrests in California, 1985
(December 1986)
Juvenile Justice in California, 1983 (June
1984)
Motor Vehicle Theft in California
(December 1987)
Motor Vehicle Theft Recovery Data,
1983-1989 (October 1990)
Women in Crime: The Sentencing of
Female Defendants (April 1988)

BCS Reports

Adult Felony Arrest Dispositions in
California (April 1992)
Crime in California and the United States,
(1983, 1990, 2000)
Effectiveness of Statutory Requirements
for the Registration of Sex Offenders - A
Report to the California State Legislature
Executive Summary of the Final Report -
Blue Ribbon Commission on Inmate
Population Management (January 1990)
The Juvenile Justice System in California: An
Overview (April 1989)
Parolees Returned to Prison and the
California Prison Population (January
1988)
Target Hardening: A Literature Review
(October 1989)

CJSC Report Series

Report on Arrests for Burglary in California,
1998**
Report on Arrests for Domestic Violence in
California, 1998**
Report on Arrests for Driving Under the
Influence in California, 1997**
Report on Drug Arrests in California, From
1990 to 1999 (December 2000)
Report on Juvenile Felony Arrests in California,
1998 (March 2000)
Report on Violent Crimes Committed Against
Senior Citizens in California, 1998**

CJSC Research Series

Why Did the Crime Rate Decrease Through
1999? (And Why Might it Decrease or
Increase in 2000 and Beyond?) (December
2000)

Monograph Series

Conspicuous Depredation: Automobile
Theft in Los Angeles, 1904 to 1987
(March 1990)
Controlling Felony Plea Bargaining in
California: The Impact of the Victim's
Bill of Rights (1986)
Development of a White Collar Crime Index
(December 1992)
Incapacitation Strategies and the Career
Criminal (December 1992)
Measuring White Collar Crime in
Depository Institutions (December 1993)
Prosecutors' Response to Parental Child
Stealing: A Statewide Study (April 1995)
Race & Delinquency in Los Angeles
Juvenile Court, 1950 (December 1990)
Survey Report: "The Expansion of the
Criminal Justice and Penal System in
California - Is greater coordination
required?" (December 1988)

Miscellaneous

California Criminal Justice Time Line, 1822-
2000 (June 2001)
Crime in California (April 2001)
Gang Organization and Migration/Drugs,
Gangs & Law Enforcement
Proceedings of the Attorney General's
Crime Conference 85 (September 1985)
Proceedings of Symposium 87: White
Collar/Institutional Crime - Its Measure-
ment and Analysis

*Prior to 1991, the Criminal Justice Statistics Center (CJSC) was known as the Bureau of Criminal Statistics (BCS).

**Available on the Internet.

If you need a publication or assistance in obtaining statistical information or a customized statistical report, please contact the CJSC's Special Requests Unit at the:

California Department of Justice
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