AGENDA

I. Welcome and Introductions

II. Public Comment
   Speakers: Tim James and Aaron Moreno, California Grocers Association
   Jonathan Feldman, California Police Chiefs Association
   “Keeping California Safe: The Case for the Public Safety Initiative”

III. Overview of Parliamentary Procedure and Roberts Rules (Attachment A)   Informational

IV. Committee Orientation (Attachment B)   Informational

V. Strategic Goals for 2018 (Attachment C)   Informational

VI. Update of Existing Policy & Guiding Principles (Attachment D)   Action

VII. 2018 Draft Work Program (Handout)   Action

VIII. Federal and State Legislative Update
   A. Police Chiefs-Grocers Initiative (Attachment E)   Informational
   B. Governor’s Budget: Public Safety Provisions (Attachment F)   Informational
   C. Attorney General’s Announcement/League Response (Attachment G)   Informational
   D. AB 1578 (Jones-Sawyer) Cannabis: Cooperation w/Feds (Attachment H)   Action
   E. Update on $25 Million for Local Siting Grants (Attachment I)   Informational
   F. Update on State’s Cannabis Regulations (Attachment J)   Informational

Next Meeting: Friday, April 13, Sheraton Fairplex Hotel, 601 W. Mckinley Ave, Pomona

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state’s Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials’ statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). If you would prefer not to have to report the value of the lunches as income, we will let you know the amount so you may reimburse the League.

Brown Act Reminder: The League of California Cities’ Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:
1. Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or
2. A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.
   A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

Informational Items: Any agenda item listed for information purposes may be acted upon by the Policy Committee if the Chair determines such action is warranted and conforms with current League policy. If the committee wishes to revise League policy or adopt new policy for an item listed as informational, committees are encouraged to delay action until the next meeting to allow for preparation of a full analysis of the item.
Parliamentary Procedure Basics Relating to League Policy Committees  
(adapted from Robert's Rules of Order Newly Revised1)

Note: This document is designed to provide practical examples of common procedural matters encountered by League policy committees. It strives to provide guidance to foster productive and efficient meetings; it is not meant to be an exhaustive or comprehensive discussion of Robert's Rules. As always, it is the role and discretion of the chair to provide helpful guidance to individuals that may digress from the appropriate form and substance related to the conduct of meetings and the presentation of motions and other procedural matters set forth below.

I. COMMON MOTIONS

1. Main Motions
   Purpose: To introduce items to the committee for their consideration.
   Example: "I move the staff recommendation to support AB 123."

2. Motion to Amend
   Purpose: Retains the main motion under discussion, but changes it in some way.
   Example: "I move to amend the (presented main) motion to support AB 123 if amended."

"Friendly" Amendments
   Purpose: To offer an amendment to the main motion that is still supportive of the main motion.
   Example: If there is currently a motion to support AB 123 on the floor and a committee member makes a "friendly" amendment to support AB 123 and also request that staff report back after contacting the sponsor for clarification on specific language.

Note: This is commonly mishandled procedurally. Often the individual that seeks to offer the "friendly" amendment will inquire if the maker of the original motion will "accept" the amendment, and if so the chair will treat the motion as amended. This is not the proper way to handle such an amendment. It is not the discretion of the mover of the original motion (or the chair) to accept or decline the amendment, rather it must be adopted by the committee.

However, if it appears to the chair that an amendment (or any other motion) is uncontroversial, it is proper for the chair to ask if there is "any objection" to adopting the amendment. If no objection is made, the chair may declare the amendment adopted. If even one member objects, however, the amendment is subject to debate and vote like

any other, regardless of whether its proposer calls it "friendly" and regardless of whether the maker of the original motion endorses its adoption.

3. Substitute Motion

*Purpose:* Removes the motion under discussion and replaces it with a new motion.

*Example:* When there is a main motion on the floor to support a bill, a substitute motion would be, “I move a substitute motion that the committee oppose AB 123.”

**Addressing Multiple Motions**

The following examples provide guidance relating to how multiple motions are handled, and the impact failed substitute motions have on original (main motions) and any proposed amendments. The last motion presented should be considered first.

*Note:* Substitute motions commonly occur during policy committee meetings, yet Robert's Rules does not make a distinction between motions to amend and substitute motions. However, motions to amend must be considered prior to a main motion. Because the use of "substitute" motions is fairly widespread, the label as it is reflected in practice is used in the examples below. Rosenberg's Rules of Order do reference substitute motions and their impact is also reflected below.

**Example 1**

Committee Member 1: "I move that we support AB 123."
Committee Member 2: "I move that we support AB 123, if amended."
Committee Member 3: "I move a substitute motion that we oppose AB 123."

**Characterizing the Motions:**

In the above example:
Committee Member 1 has made a (main) motion.
Committee Member 2 has made an *amendment* to Committee Member 1's motion.
Committee Member 3 has made a *substitute* motion to Committee Member 1's motion.

**Order for Consideration and the Possible Outcomes**

Committee Member 3's motion is considered first. If Committee Member 3's motion *fails*, Committee Member 2's motion will be considered next. If Committee Member 2's motion *fails*, Committee Member 1's motion will be considered. If Committee Member 2's motion *passes*, there is no need to consider Committee Member 1's motion.

If Committee Member 3's motion *passes*, there is no need to consider Committee Member 1's motions because Committee Member 3's motion replaces Committee Member 1's original motion. There is also no need to consider Committee Member 2's motion since it is an amendment to Committee Member 1's motion that has been replaced by Committee Member 3's substitute motion.

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Example 2
Committee Member 1: "I move that we support AB 123."
Committee Member 2: "I move a substitute motion that we oppose AB 123."
Committee Member 3: "I move that we oppose AB 123 unless amended."

Characterizing the Motions
In the above example:
Committee Member 1 has made a (main) motion.
Committee Member 2 has made a substitute motion to Committee Member 1's motion
Committee Member 3 has made an amendment to Committee Member 2's substitute motion (sometimes referred to as a substitute to a substitute motion).

Reviewing the Possible Outcomes
Committee Member 3's motion should be considered first. If the motion fails, Committee Member 2's motion is considered.
If Committee Member 2's motion passes, it is not necessary to consider Committee Member 1's motion because Committee Member 2's motion substitutes for it.

If Committee Member 3's motion fails, Committee Member 2's motion is considered. If Committee Member 2's motion fails, the substitute motion for Committee Member 1's motion fails, and Committee Member 1's motion is considered.

If Committee Member 3's motion passes, it is not necessary to consider Committee Member 1’s motion because Committee Member 3's motion substitutes for it.

Example 3
Committee Member 1: "I move that we support AB 123."
Committee Member 2: "I move a substitute motion that we oppose AB 123."
Committee Member 3: "I move a substitute to the substitute motion that we take no position on AB 123."

Characterizing the Motions
In the above example:
Committee Member 1 has made a (main) motion.
Committee Member 2 has made a substitute motion to Committee Member 1's motion
Committee Member 3 has attempted to make a substitute to Committee Member 2's substitute motion (sometimes referred to as a substitute to a substitute motion).

Reviewing the Possible Outcomes
While procedurally permissible, in an effort to avoid confusion Committee Member 3’s motion should not be entertained by the chair until Committee Member 1 and Committee Member 2's motions have been discussed and voted upon.

Committee Member 2's motion should be considered first. If the motion fails
Committee Member 1's motion is considered. If Committee Member 1's motion fails, then Committee Member 3's may make the motion to "take no position on AB 123."

If Committee Member 2's motion passes, it is not necessary to consider Committee Member 1’s motion because Committee Member 2's motion substitutes for it.
4. **Motion to Withdraw**  
*Purpose:* To withdraw an item from discussion.

*Making the Motion to Reconsider:* Only the individual that made the initial motion can make a motion to withdraw an item from discussion. The individual may interrupt a speaker (after being recognized by the chair) to withdraw the motion under discussion at any time.

*Note:* This type of motion typically occurs following some debate by the committee that may provide additional information that influences the mover to reconsider continued debate on the original motion presented. Another member may subsequently make the same motion after it has been properly withdrawn.

*Example:* “Madame Chair, I move to withdraw my motion to support AB 123.”

5. **Motion to Reconsider**  
*Purpose:* To revisit discussion of an issue.

*Making the Motion to Reconsider:* A motion to reconsider must be made by an individual that previously voted in the majority of the original motion. A motion to reconsider made by an individual that previously voted in the minority must be characterized as out of order.

*Timing:* A motion to reconsider must be made at the same meeting where the original motion was discussed, or the next meeting of the body. Motions for reconsideration following the next meeting are out of order.

*Example:* “I move to reconsider the committee’s position to support AB 123.”

6. **Motion to Table**  
*Purpose:* This motion is often used in the attempt to "kill" a motion by setting it aside. The option is always present, however, to "take from the table," for reconsideration by the committee.

*Note:* This type of motion should be reserved to temporarily set an item aside if agreed upon by a majority of the committee to take up an item of immediate urgency. However, in practice it is sometimes used as an option to end debate and prevent a vote, and not typically to take up an item of immediate urgency. This is technically improper procedure (or out of order) under Robert's Rules.

*Example:* “I move that the committee table the motion to support AB 123.”

7. **Call for the Question**  
*Purpose:* To refocus the committee on the agenda in the event there is sentiment that the discussion has drifted. The individual seeking to end debate must first be recognized by the Chair, make the motion and the motion must receive a second. The motion must be adopted by a 2/3 vote or unanimous consent.

*Example:* “I move the previous question.”
Note: The above procedure is consistent with Roberts Rules, however, in practice when an individual calls for the question a vote is not usually taken. The motion simply serves as an indicator to the chair that the debate may have drifted from the agenda, and the chair should remind the committee to return to the agenda. If there is a sense that the current discussion is productive the chair may elect to ask for a vote relating to the motion to call for the question, or the chair may propose continued discussion for some short period to allow individuals that wish to speak the opportunity.

8. **Motion to Appeal**

*Purpose:* To appeal a ruling made by the chair. A committee member may move to appeal a ruling by the Chair, but it must be seconded and receive a majority vote to be reversed.

*Example:* "I move to appeal the Chair’s ruling that the committee approved support of AB 123."

9. **Adding an Item to the Agenda for Consideration**

*Purpose:* To have the committee discuss an item that is not on the prepared agenda before them. Because the League is committed to complying with the legal requirements and spirit of the Brown Act additional agenda items may be considered only if they fall within any of the below exceptions:

- An item may be added to the agenda by circulation to the committee members and posting on the League website at least 72 hours prior to the meeting.

- An item may be placed on the agenda at the meeting if the majority decides that it is an “emergency situation.” An emergency situation includes work stoppage, crippling disaster, or any other activity that impairs public health safety or both.

- Two-thirds of the committee members present (or all of the members if less than two-thirds are present) must determine that there is a need for immediate action, and the need to take action arose subsequent to the circulation of the agenda.

If an item does not fall within one of these exceptions it may not be discussed and acted upon, but may be added to a subsequent agenda.

*Note:* This procedure is typically used when there is a supplemental agenda that is distributed at the meeting that was not mailed to the committee prior to the meeting.

II. **OTHER ITEMS**

1. **Point of Privilege**

*Purpose:* To draw attention to an item that interferes with the comfort of the meeting.

*Example:*

**Committee Member:** “Point of privilege.”
**Chair:** “State your point.”
**Committee Member:** “Madame Chair, may we inform the hotel staff that the room is uncomfortably hot and request that the air conditioning be adjusted.”
2. **Point of Order**  
*Purpose:* To draw attention to inappropriate conduct at the meeting.

*Example:*

*Committee Member:* “Point of order.”  
*Chair:* “State your point.”  
*Committee Member:* “Madame Chair, the motion was approved without opportunity for debate.”

3. **Public Comment**  
In the spirit of the Brown Act an opportunity for public comment is included on all agendas. The chair should exercise discretion in determining the appropriateness and extent of public comment during committee meetings setting reasonable limits as needed.

III. **HOW TO PRESENT A MOTION**

1. Obtain the floor by raising your hand and wait to be recognized by the chair.  
2. Make your motion.  
   a. Speak clearly and concisely.  
   b. Always state a motion affirmatively. For example, "I move the staff recommendation that we support AB 123..." rather than, "I move that we do not take a position ...".  
   c. Avoid comments unrelated to the subject of the motion.  
   d. Avoid making any arguments supporting your motion at this time, simply state the motion.  
3. Wait for someone to second your motion.  
4. Another member will second your motion or the chair will call for a second.  
5. If there is no second to your motion it is lost and no vote will be taken by the committee.  
6. If there is a second to your motion the chair should re-state the motion, or ask League staff to re-state the motion.  
   a. The chair will say, "it has been moved and seconded that we ..." This places the motion before the committee for consideration and action.  
   b. The committee then either debates the motion or may move directly to a vote.  
   c. Once a motion is presented to the committee by the chair it becomes "committee property," and cannot be changed by the maker of the motion without the consent of the committee.  
7. At this point the individual making the initial motion (the mover) may elect to expand on the motion. For example, this would be the appropriate time for the mover to present an argument in support of the motion.  
8. The chair should always recognize the mover first.  
   a. All comments and debate must be directed to the chair.  
   b. Keep to the time limit (if any) for speaking that has been established.  
   c. The mover may speak again only after other speakers are finished, unless called upon by the chair.  
9. **Putting the Question to the Committee**  
   a. The chair asks, "Are you ready to vote on the question?"  
   b. If there is no more discussion, a vote is taken on the motion.  
   c. If the motion passes, the committee moves on to the next item on the agenda.
d. If the motion fails, and no other motion is on the floor, then a new motion is in order.

*Note: If a motion to support AB 123 fails, this does not mean that there is opposition to AB 123 by default. A separate motion to oppose AB 123 or some other formal motion must be made and voted on by the committee.*

**IV. VOTING ON A MOTION**

1. **Voting is Conducted by Voice**
   
   The chair asks those in favor to say, "aye," those opposed to say "no." If the outcome is unclear by voice, a hand vote may be taken. Any member may move for an exact count. Following the vote, the chair should announce the outcome.

   *Example:*
   
   *Chair:* There is a motion and a second to support AB 123. All those in favor say, "aye." All those opposed say, "no." If the outcome by voice is clearly in support the chair would announce that, "The motion to support AB 123 passes." If the outcome results in opposition to the motion, the chair would announce that, "The motion to support AB 123 fails." If the outcome is unclear the chair, or another member may ask for a hand count.

**V. QUORUM**

1. **Presumption of a Quorum**
   
   The presence of a quorum is presumed unless the issue is raised.

   *Note: It is not necessary, and is disfavored for the chair to routinely begin a meeting inquiring about the presence of a quorum.*

2. **Calculating the Presence of a Quorum**
   
   If the issue of whether a quorum is present is raised, a quorum consists of a majority of all appointed, voting members of a policy committee. A majority simply means more than half, not fifty percent plus one.

3. **Votes Taken Prior to the Question of Whether a Quorum is Present Are Valid**
   
   If a vote(s) is taken prior to the question of whether a quorum was present is asked, and it is later determined that a quorum was not present when the vote(s) was taken, the action taken is still valid.

4. **Votes Taken in the Absence of a Quorum are Advisory**
   
   A vote may be taken on matters even if a quorum is not present, but all votes taken by that body will be advisory to the League Board or the General Resolutions Committee, and the Board or the General Resolutions Committee must be advised that a quorum of the body was not present. The vote count should also be noted and communicated.
COMMITTEE ORIENTATION

Policy Committee Subject Matter
The League has eight (8) policy committees, each with its own subject matter jurisdiction. You may refer to the “Summary of Existing Policy and Guiding Principles” booklet (Summary) to find the subject matter for each committee. This document is updated every two years. Policy in the Summary is used to determine League legislative and regulatory positions. The Summary, in its entirety, is located on the League’s Website at www.cacities.org/summary. Individual sections are located on each policy committee’s Web page, which are available at www.cacities.org/polcomm.

Policy Committee Legislative Agenda Items
League policy committees review bills or regulatory proposals on issues for which the League does not have existing policy, or for which staff members feel a policy discussion needs to occur for greater clarity or background on an issue. Staff will lobby legislation, funding proposals, or regulatory changes where existing policy provides clear direction.

Role and Responsibility of Committee Members
The strength of the League’s policy process and ability to effectively engage in the legislative process is based on the active involvement of and the expertise of city officials. We rely on your technical and policy knowledge, thoughtfulness, strategic thinking, and political savvy. Your role is to engage in thoughtful discussions at the meeting. Members should review the agenda and background material prior to the meetings, attend each meeting, and stay for the entire duration of the meeting.

Committee Recommendations on Positions on Bills
The committee’s actions or positions are a recommendation to the League Board of Directors for a formal League position. Possible committee recommendations can be:

- Support
- Oppose
- Support-if-amended (as appropriate, specific amendments may be requested)
- Oppose-unless-amended (as appropriate, specific amendments may be requested)
- No position
- Neutral

There are nuanced differences between some of these positions. For example, “support-if-amended” sends a very different message than “oppose-unless-amended.” Both positions might seek the same change but the support-if-amended position means that the League would be listed with the “supporters” of the bill in most legislative analysis. In addition, “no position” and “neutral” have different meanings and require different actions from staff. Selection of one or the other depends in part upon what type of
message or political posture the League needs to take. Staff will advise the committee about the implications of each on a case-by-case basis.

**Approval by League Board Needed for All Committee Recommendations**

All committee actions are recommendations to the League Board, which has the final say on all positions. Under no circumstances are individual committee members or the committee itself authorized to speak on behalf of the League. When a committee action is supported by a large majority (e.g., 32 to 3), the recommendation is placed on the Board’s consent calendar. When the committee vote is split (e.g., 15 to 13), the item will be presented as an action item for the Board’s discussion. Staff will also provide information about the reasons behind the committee’s recommendation to the Board.

Most of the time, the Board adopts the recommendation of the policy committee. When the Board adopts a different position, staff will notify the committee members of the reason for the different position. This likely will be done in the next regular communication with the committee.

Some issues cut across more than one committee. When this occurs, staff will coordinate and bring a bill to more than one committee for review and recommendation. The recommendations are then forwarded to the League Board and if there is a different recommendation, the League Board resolves the difference.

**Role of the Committee Chair**

The chair’s role is to balance the often competing needs of the membership to have a full and thoughtful discussion on the issues within the very real time constraint. The chair will often limit debate – either in the number of speakers or the amount of time each speaker has – in order to ensure that we can move ahead on our agenda and cover the items included. We ask that when you make comments on issues before the committee that you be brief and concise and that you not repeat what has already been stated. Also, if you have already spoken on an issue, the chair may ask you to hold your comments until after new speakers are able to share their comments.

**Committee Schedule and Process**

Committees generally meet three times a year (January and June in Sacramento, April in Southern California), plus an abbreviated meeting at the Annual Conference (September in Sacramento) to review resolutions if any are assigned to it. (The September meeting schedule will be announced in mid-July). Meetings begin at 10:00 a.m. and conclude by 3:00 p.m., although some subcommittees may meet at 9:00 a.m.  Please plan to be present for the full duration of the committee meetings.

**Agendas/Disseminating Information**

Agenda packets will only be sent via email and posted online. If you prefer a hard copy of the agendas and highlights, please contact Meg Desmond by email: mdesmond@cacities.org or phone: 916-658-8224. Highlights that summarize committee actions are prepared by staff and provided to committee members about two to three weeks after the meetings. All materials are also available on the League’s Website: www.cacities.org/polcomm.

We encourage you to visit the League’s Website: www.cacities.org. In addition to containing committee materials, the Website contains information on the League’s priorities and a link to track individual bills and the League’s position on them. You should also subscribe to the League’s electronic newsletter CA Cities Advocate.
For meetings that are heavy in legislative review (generally in March/April and June), staff will try to find a balance between getting the agenda packet out early and the need to delay finalizing the agenda packet in order to include as many legislative items as possible and in their most current version. At some meetings, staff may use a supplemental agenda for last minute legislative issues. We will use e-mail as appropriate to send out late-breaking information or to gather committee input throughout the year. It is important that we have your preferred e-mail.

**How to Get an Item on the Agenda**

Because staff prepares background material in advance of the meeting, and prepares the agenda in consultation with the Chair and Vice Chair, it is difficult to add items at the last minute. In addition, the League tries to comply with the spirit of the Brown Act in its meetings. If you wish to have the committee discuss an item, you should contact staff well in advance of the meeting in order to determine the feasibility of including it on the agenda, and if so, allow staff time to prepare the appropriate background material. Because of time constraints and a full work program before the committee, it may not always be possible to respond to such requests.

**Issues Should Have Statewide Impact**

Although some of you may represent your division, your department, your affiliate organization, or simply yourself, we should all keep in mind that the League must address issues of statewide impact and interest. Thus, while an issue or bill may be of interest to your city or region, if it does not have broader, statewide implications, the League likely will not engage in that policy discussion or take a position. You should keep this in mind if you wish to suggest an item for discussion.

**Brown Act and Roberts Rules of Order**

The League tries to comply with the spirit of the Brown Act. Thus, when the committee discusses items not already on the agenda (e.g., supplemental legislative agenda), the Chair will ask for a vote of approval to add that item to the agenda. The League also follows Roberts Rules of Order and provides a brief overview of key procedural steps in Roberts Rules as they apply to committees.

**Staffing for Committee**

Each committee has a staff lobbyist assigned to it. This individual is your main point of contact for logistics or questions about the agenda. Generally, each lobbyist has a “main” committee and will remain with the committee throughout the meeting. Occasionally he/she may leave the meeting to make guest appearances in other committees to discuss issues or bills. Additional staff may also be present to support the committee’s work.

**League Partners and Other Guests**

The League Partners have non-voting representatives assigned to each policy committee and are seated at the table with other committee members. In addition, city officials, other members of the League Partners Program, and interested members of the public are welcome to attend the meetings. We provide an opportunity for our League Partners and other members of the public to offer comment on items before the committee during the designated public comment period on the agenda.
2018 LEAGUE STRATEGIC GOALS

1. **Address Public Safety Concerns of California Cities.**

   Address public safety concerns arising from recently enacted reduced sentencing laws.

   Protect local funding and authority in the implementation of the Adult Use of Marijuana Act.

   Continue to preserve city rights to deliver emergency medical services (Health and Safety Code 1797.201).

   Seek additional tools and resources to address critical community challenges such as homelessness, mental health, domestic violence, drug rehabilitation, ex-offender reentry, and human trafficking.

2. **Ensure Sustainability of Public Pension and Retirement Health Benefits.**

   Consistent with the League’s adopted pension sustainability principles, work with affected stakeholders, employees, CalPERS, legislators and the Governor to achieve meaningful options for cities to address growing unfunded pension liabilities that will ensure cities remain solvent and provide services to residents while continuing to offer employees meaningful and sustainable pension and health benefits.

3. **Protect Existing Transportation Funding for Local Priorities.**

   Protect existing transportation funding for local priorities and oppose efforts that would reduce or eliminate funding for cities.

4. **Improve Housing Affordability and Support Additional Resources to Address the Homelessness Crisis.**

   Increase state and federal financial support and provide additional local incentives and tools to improve housing affordability and develop more workforce and affordable housing. Support additional resources and tools to address the homelessness crisis and advance the recommendations of the CSAC-League Homelessness Task Force.
SUMMARY OF EXISTING POLICIES AND GUIDING PRINCIPLES

2018 DRAFT

Every two years, the League updates its “summary of Existing Policies and Guiding Principles” to reflect new League policy adopted during the past two years. The purpose of this update is not to develop new League policy or revisit existing League policy. The document provided indicates new policy adopted during the past two years in **bold underlining** or **bold strikeouts**. This is new policy that has been adopted through Annual Conference Resolutions, League positions on bills approved by the League Board of Directors, or broad League policy approved by the League Board of Directors over the last two years. Committee members should review the proposed update and consider whether it accurately reflects the actions taken by the policy committee (and League Board) over the last two years, and whether there are any missing policy items or errors in describing policy. Committee members who wish to propose new League policy or to revisit existing League policy should suggest that the issue be placed on an agenda for a future policy committee meeting, as opposed to attempting to modify the policy through this update.

Public Safety

*Scope of Responsibility*

The Committee on Public Safety reviews federal and state legislation and issues related to law enforcement, fire and life safety policies, emergency communications, emergency services, disaster preparedness, Indian gaming, and nuisance abatement.

*Summary of Existing Policy and Guiding Principles*

**Fire Services**

The League supports the fire service mission of saving lives and protecting property through fire prevention, disaster preparedness, hazardous-materials mitigation, specialized rescue, etc., as well as cities’ authority and discretion to provide all emergency services to their communities.

The League supports and strives to ensure local control of emergency medical services by authorizing cities and fire districts to prescribe and monitor the manner and scope of pre-hospital emergency medical services, including transport through ambulance services, all provided within local boundaries for the purpose of improving the level of pre-hospital emergency medical service.

The League supports legislation to provide a framework for a solution to long-standing conflict between cities, counties, the fire service and LEMSA’s, particularly by local advisory committees to review and approve the EMS plan and to serve as an appeals body. Conflicts over EMS governance may be resolved if stakeholders are able to participate in EMS system design and evaluation and if complainants are given a fair and open hearing.

The League supports stored pressure dry chemical fire extinguishers to be serviced and recharged every six years or after each use, whichever occurs first. Additionally, the League supports requiring a licensed technician to perform the annual external maintenance examination of stored pressure dry chemical fire extinguishers.
The League opposes legislation, regulations and standards that impose minimum staffing and response time standards for city fire and EMS services since such determinations should reflect the conditions and priorities of individual cities.

The League supports Emergency 911 systems to ensure cities and counties are represented on decisions affecting emergency response.

The League supports additional funding for local agencies to recoup the costs associated with fire safety in the community and timely mutual aid reimbursement for disaster response services in other jurisdictions.

**Emergency Services and Preparedness**

The League supports the 2-1-1 California telephone service as a non-emergency, human and community services and disaster information resource.

The League supports “Good Samaritan” protections that include both medical and non-medical care when applicable to volunteer emergency, law enforcement, and disaster recovery personnel. The League also supports providing “Good Samaritan” protections to businesses that voluntarily place automated external defibrillators (AEDs) on their premises to reduce barriers to AED accessibility.

Emergency Communications Interoperability: The League supports activities to develop and implement statewide integrated public safety communication systems that facilitate interoperability and other shared uses of public safety spectrum with local, state and federal law enforcement, fire, emergency medical and other public safety agencies.

The League supports a single, efficient, performance-based state department (the California Emergency Management Agency) to be responsible for overseeing and coordinating emergency preparedness, response, recovery, and homeland security activities.

The League supports efforts to secure additional funding for local agencies to provide training opportunities for appropriate first responder personnel to improve their ability to respond to oil spills, fires, and other hazardous materials accidents.

The League supports legislation and additional state and federal regulation crafted to ensure that first responders can perform their duties during emergency response operations without interference from unmanned aerial systems, or drones.

**Law Enforcement**

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens’ Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

The League opposes booking fees and continues to seek their repeal, while encouraging localities to pursue resolution of the issues with their respective counties.
The League supports a local government’s ability to double the fine for traffic violations in school zones in an attempt to reduce the speed of drivers and protect our youth.

The League supports reimbursement by the federal government to local agencies, specifically cities, for the costs associated with incarcerating deportable criminals, including the direct costs associated with processing and booking at the time of arrest.

The League supports policies that promote a victim’s right to seek restitution, create restrictions on the early release of state inmates from incarceration for the purpose of alleviating overcrowding, and limit parole hearing opportunities for state inmates serving a life sentence or paroled inmates with a violation.

The League supports parolee search and seizure terms, which aids local law enforcement’s ability to manage paroled offenders.

The League supports increased penalties for metal theft, and recognizes that statewide regulation is needed to discourage “jurisdiction shopping”. The League also supports increased record-keeping and reporting requirements for junk dealers, including the collection of thumbprints from sellers.

**The League supports accountability on the part of law enforcement agencies in regard to police surveillance technology and policies, as well as related oversight by local governing bodies, but also strongly supports limits on disclosure of the full capabilities of such technology to the general public where such disclosure would compromise the effectiveness of the technology’s law enforcement applications.**

**Wildland Urban Interface**

The League supports activities to cooperate, coordinate, and communicate in the development of better land use policies and wildland fuel management programs to decrease impacts to public health and safety resulting from wildland urban interface fires.

**Nuisance Abatement**

The League supports enhanced local control over public nuisances including, but not limited to:

- Adult entertainment facilities;
- Problem alcohol establishments; and
- Properties where illegal drugs are sold.

**Violence**

The League supports the reduction of violence through strategies that address gang violence, domestic violence, youth access to tools of violence, including but not limited to firearms, knives, etc., and those outlined in the California Police Chiefs Policy Paper endorsed by the League Board of Directors.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.
Indian Gaming

The League supports the following principles that are intended to balance tribal self-reliance with the local government mandate to protect the public health and safety.

- Require an Indian Tribe that plans to construct or expand a casino or other related businesses to seek review and approval of the local jurisdiction for such improvements consistent with state law and local ordinances including the California Environmental Quality Act, with the Tribal government acting as the lead agency and with judicial review in the California courts.
- Require mitigation of off-reservation impacts consistent with environmental protection laws that are at least as stringent as those of the surrounding local community and CEQA.
- Require written agreements between tribes and affected local agencies to ensure tribes are subject to local authority related to the infrastructure needs and services outlined above.
- Require adequate compensation from the tribes to the local agency providing the government services that are required by the tribal casino or related businesses.
- Ensure compensation to local agencies from the Special Distribution Fund for off-reservation mitigation coupled with other sources to ensure adequate compensation.
- Require a judicially enforceable agreement between tribes and local jurisdictions on all of these issues before a new compact or an extended compact may become effective.
- Establish appropriate criteria and guidelines to address future compact negotiations.
- The Governor should establish and follow appropriate criteria to guide discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act (25 U.S.C. § 2719).

Gaming

The League supports measures expanding local control over local gaming operations, including but not limited to management of the hours of operation and number of tables in an establishment, as an effective tool to enhance related local revenue streams. The League opposes as a restriction on those same revenue streams measures that would further restrict such local control, including but not limited to the extension of existing statewide gaming moratoriums.

Alcohol

The League supports policies that limit the ability of minors to engage in alcohol consumption, and limit youth access to alcoholic beverages, so long as related state-mandated programs or services provide for full reimbursement to all local agencies.

The League supports local policies that hold social hosts responsible for underage drinking that occurs on property under their possession, control, or authority.

The League supports additional penalties for repeat driving under the influence (DUI) offenders that include, but are not limited to, permanent revocation of an individual’s driver’s license.

The League supports legislation and other regulations intended to improve local governments’ enforcement capability against alcohol licensees that are in violation of state law and local ordinances.
Marijuana Regulation

The League opposes the legalization of marijuana cultivation and use for non-medicinal purposes.

The League regards as a vital interest the maintenance of local control over medical and adult use cannabis businesses, and supports measures that enhance and protect maximum local regulatory, land use, and enforcement authority in relation to such businesses.

Reaffirming that local control is paramount, the League holds that cities should have must retain the authority to regulate all medical and adult use cannabis businesses, marijuana dispensaries, cooperatives, collectives or other distribution points if the regulation relates to location, operation, or establishment to best suit the needs of the community.

The League affirms that revenue or other financial benefits from creating a statewide tax structure on medical marijuana should be considered only after the public safety and health ramifications are fully evaluated and addressed.

While the value of marijuana as a physical or mental health treatment option is uncertain, the League recognizes the need for proactive steps to mitigate the proliferation of unlawful medical marijuana cannabis dispensaries, cooperatives, collectives businesses and other access points acting outside state or local regulation.

The League supports marijuana cannabis regulation only to the degree that any such regulatory structure preserves and upholds local control and the police power of local governments pursuant to Article XI, Section 7 of the California Constitution.

Graffiti

The League endorses the “Tag You Lose” anti-graffiti campaign and encourages other cities to implement this program into their existing anti-graffiti programs.

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Sex Offender Management

The League supports policies that will assist local law enforcement with the comprehensive and collaborative management of sex offenders, including tools for tracking the location of sex offenders within local jurisdictions, so long as state-mandated programs provide for full reimbursement to all local agencies.

Corrections

The League supports constitutional protections for state funded corrections realignment programs, so long as it includes funding for local police department needs. The League also supports increasing city
representation and participation on the Community Corrections Partnerships, who are charged with developing local corrections plans.

**Miscellaneous**

The League opposes reductions to city authority to regulate needle and syringe accessibility and exchange programs.

The League asks any company manufacturing or marketing or planning to manufacture or market colored-tread tires in California to voluntarily abandon such a product line and thereby prevent the public safety, environmental and social problems these tires can potentially cause.

The League warns those individuals who advocate or perpetrate hate, not to test the cities’ resolve to oppose them as each city is encouraged to vigorously pursue a course of investigation, apprehension, prosecution, conviction, and incarceration of all those who participate in hate crimes.

**Note:** The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League’s General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of “Summary of Existing Policies and Guiding Principles.”
VIII. State and Federal Legislative Update

A. Police Chiefs-Grocers Initiative

Bill Summary:
This measure would broaden the definition of violent felonies to reflect a more realistic universe of offenses; address serial theft by enacting provisions facilitating prosecution for repeat offenses; address organize retail theft; alter the rules for granting parole to non-violent offenders; authorize DNA collection upon arrest for specified misdemeanors; and enact changes to the management of the post-release community supervision population of offenders.

Bill Description:
Title and Summary for this initiative (No. 17-0044) were issued by the California Attorney General on January 4, 2018. The Initiative has the following major components:

1) **Violent Felonies.** Expands existing list of violent felonies in the Penal Code, altering a number of offenses which are currently misdemeanors, to felonies, requiring sentencing to state prison upon conviction. Examples of these offenses are:
   a) Assault with a deadly weapon
   b) Rape of an unconscious person
   c) Rape via use of an intoxicating/controlled substance
   d) Throwing acid with intent to disfigure
   e) Discharging a firearm from a motor vehicle
   f) Discharging a firearm at an unoccupied dwelling
   g) Attempted arson
   h) Conspiracy to commit serious or violent felony
   i) Threatening a witness

2) **Serial or Repeat Theft Offenses.** Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors.
   a) Specifically, specifies that the $950 threshold for grand theft does not apply to forgery, elder abuse involving theft, receiving stolen property, embezzlement, identify theft, or unlawful transfer of an access card.
   b) Addresses serial theft by providing that upon the third conviction of petty theft or shoplifting where the value of stolen property exceeds $250.00, the penalty will be up to one year in county jail, or a term in county jail of 16 months, 2 years, or three years.

   c)

3) **Organized Retail Theft.** Addresses organized shoplifting operations that have resulted in millions in losses for retailers statewide.
   a) Provides that a person who commits two or more instances of theft of retail property or merchandise exceeding $250.00 during any 180-day period, acting in concert with one or more persons, is guilty of organized retail theft.
b) Allows aggregation of property stolen on previous occasions during a 180-day period.
c) Allows prosecution in any county able to exercise jurisdiction for a single offense.

4) **DNA Collection.** Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database. This will include theft and drug crimes including forgery, burglary, passing bad checks, grand theft, receiving stolen property, lewd conduct, solicitation, assault, elder abuse, and controlled substances violations.

5) **Changes to Parole Criteria.** Imposes more restrictive criteria for parole as follows:
   a) Provides that the rule prohibiting inmates from being returned on parole to any location within 35 miles of a victim or witness would include those convicted of violent felonies, as the Initiative would re-define them.
   b) Imposes new standard of review for parole for non-violent offenders, specifically whether the inmate will pose an unreasonable risk of creating victims of felonious conduct if released from prison – and specifies 33 criteria to be considered by Parole Board.
   c) Affirmatively requires CDCR to give notice to victims of crime prior to inmate being reviewed for parole or release.

6) **Changes to Post-Release Community Supervision.**
   a) Authorizes county probation offices, upon a determination that authorized intermediate sanctions are not appropriate, to petition a court to revoke an individual’s PRCS if that person has violated the terms of his release for a third time.
   b) Authorizes warrantless arrest, including by a probation officer, if the supervisee on PRCS has failed to appear at a hearing to revoke/modify/terminate supervision.

**Fiscal Impact:**
- Increased state and local correctional costs projected to be in the tens of millions of dollars annually, related to increases in penalties for theft-related crimes, and changes to the non-violent offender release consideration process.
- Increased state and local law enforcement costs in the low millions annually, related to collecting and processing DNA samples from additional offenders.
- Increased state and local court-related costs of a few million dollars annually related to processing probation revocations and additional felony theft filings.

**Background:**

**Recent Developments with the Initiative Backers**

While the Retailers-Grocers are determined to proceed with the Initiative, the Police Chiefs have renewed their focus in recent weeks on possibly using the threat of the Initiative as leverage to persuade the Governor to back legislation enacting key reforms (specifically DNA Collection, re-defining violent felonies, and increasing prosecutorial options to address serial theft). This development is due in part to the significant pressure applied to major retailers by the Administration in an effort to get them to drop the initiative.
**Bottom Line for Police Chiefs**
Of the many reforms contained in the initiative, the Police Chiefs have signaled to the League that the core reforms they must have are:
- Violent Felonies
- Serial and Organized Retail Theft
- DNA Collection

If the Chiefs are able to pursue discussions on a legislative solution with the Governor, the talks will ultimately focus on these three items.

**Rehabilitation Data from ACCAPS**
According to the Association of California Cities Allied with Public Safety, a law enforcement organization consisting of the cities that are host to California’s prisons, only 30 percent of the adult inmate receives any meaningful rehabilitation programming in the form of job training prior to release. This indicates that despite the robust and significant funding enhancements in the 2018 State Budget for rehabilitation programming, current allocations are only meeting a portion of the total systemwide need. This is due to three factors: Lack of yet more robust funding; the expense of providing meaningful instruction to inmates during their incarceration; and the challenge of recruiting instructors for that purpose.

In terms of addressing recidivism and enhancing public safety in our communities, the 30 percent statistic indicates there is yet more work to be done in terms of providing meaningful rehabilitative programming in our prisons.

Ever since AB 109 (2011), the counties have received robust funding for such programming of inmates in the county jails. That funding does not affect inmates in the prisons, however, who since AB 109 was implemented are generally more violent as a class of offenders. These offenders – many of whom will one day be released into our communities -- arguably need to be presented with meaningful alternatives to crime even more than their counterparts in the county jails, if our state is committed to enhancing public safety.

**Potential Flaw in Legislative Strategy**
The initiative is reportedly polling well, and there is reason to believe it will meet with approval if and when it qualifies for the November ballot. At this writing, signature gathering has yet to begin.

However, the initiative as written is likely to usher in pressure for prison bed space within a few years. What is missing from the initiative is a mechanism to ensure something the Legislature and the Governor have publicly expressed concern about: Sustainability, i.e. keeping the state’s prison population at or below the federally mandated cap over the long term. If enacted as currently written, the Initiative will over time lead to prison beds filling up again in California’s correctional institutions, and at some point the state will exceed and remain above the prison population cap imposed by the federal court. This will undermine the Governor’s goal of getting California on a path to ending federal oversight of its prison system. The Initiative has no mechanism in it to avoid this outcome. An anti-recidivism component such as additional job training funding within the prisons could be the solution.
The negotiating strategy now favored by the Police Chiefs Association lacks a component to induce the Governor to the table; even paired back to the critical three components listed above, there may be nothing on the list that the Governor is interested in. Adding a component that augments funding for job training in the prisons could have the following advantages:

- By addressing the Governor’s concerns about his criminal justice legacy in seeking more funding for rehabilitation, it signals an awareness of his goal of ending federal oversight of prisons, and may induce him to seriously negotiate with the Police Chiefs.
- It enhances public safety by providing the most serious offenders realistic alternatives to crime – above and beyond $200.00 and a bus ticket upon release.
- It provides meaningful programming when and where it matters most: In prison, prior to release.
- By using the initiative or the budget trailer bill process, it avoids the problem of putting state elected on the spot to vote for rehabilitation funding.

**Funding Sources**

A potential funding source would be to siphon off a portion of cannabis revenues from the state excise tax on recreational sales, and earmark it for offender job training. Another possible source is to use a portion of the current Rainy Day Fund for this purpose. Using cannabis revenues would require a ballot measure to amend Prop. 64’s proposed use of the monies. Redirecting a portion of the Rainy Day Fund would most likely be achieved via a budget trailer bill.

**Amending the Initiative**

Another option is to amend the existing initiative. The deadline to amend without having to submit a completely new proposal expired on **January 2, 2018** – this was the 35th calendar day after the measure was received by the Attorney General’s office. After the 35th day, additional changes require submitting a new proposal. There are five requirements:

1. A written request that a circulating title and summary of the chief purpose and points of the proposed measure be prepared. This request must contain the proponent’s original signature.
2. The complete text of the initiative measure.
3. An original signed, dated certification for each proponent confirming U.S. citizenship.
4. An original signed, dated certification for each proponent acknowledging that it is a misdemeanor under the California Elections Code to allow signatures to be used for any purpose other than qualifying the initiative.
5. A $2000 fee, payable to the State of California.

While it is not too late to amend the Initiative, it would require the initiative backers to start over – something they are understandably reluctant to do.

**Political Realities**

In addition to considering this ballot measure, the League is anticipating possibly having to fight off a proposed repeal of SB 1 and the Transportation Tax, which poses a direct threat not only to California’s transportation infrastructure, but the League’s reputation and credibility as an organization.
There is hope that the Governor will actively support that effort. The Administration confirms that a significant fund of $15 million has been set aside. But it has also communicated that should this Public Safety Initiative qualify for the ballot, the Governor’s priority will be to defeat it, rather than the attempted repeal of SB 1.

**Existing League Policy:**
The League supports stiffer penalties for violent offenders, and proposals to expand the legal definition of violent felonies to cover activity that is clearly violent in nature. It also supports efforts to restrict the options for managing offenders who repeatedly violate the terms of their post-community release supervision. Finally, the League supports measures to address the sustained increase in property crimes since the enactment of Proposition 47, which raised the threshold for prosecution for grand theft, a felony, to $950.00.

**Recommendation:**
**Support** - possibly with an additional component for more rehabilitation funding by one of the following mechanisms:
- Amending the current initiative
- Directing staff to work with the Administration and the Legislature on an initiative statute
- Directing staff to work with the Administration and the Legislature on a budget trailer bill.

This position would support the Police Chiefs’ efforts to negotiate a legislative solution with the Governor, and should such a solution not be achieved, leaves the League free to support the measure on November ballot. Staff would be directed to brief the Committee in April on the status of any discussions with the Governor.
Date: 11/14/2017

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative No. 17-0044 – Amendment # 1

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment # 1 to Initiative No. 17-0044. The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

For purposes of inquiries from the public and the media, please direct them as follows:

Charles H. Bell, Jr.
455 Capitol Mall, Suite 600
Sacramento, CA 95814
chell@bmhlaw.com
(916) 442-7757

Thank you for your time and attention processing my request.

Sincerely,

Nina Salorio Besselman
INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

SEC. 1. TITLE

This act shall be known and may be cited as the Reducing Crime and Keeping California Safe Act of 2018.

SEC. 2. PURPOSES

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:
A. Reform the parole system so violent felons are not released early from prison, strengthen oversight of post release community supervision and tighten penalties for violations of terms of post release community supervision;
B. Reform theft laws to restore accountability for serial thieves and organized theft rings; and
C. Expand DNA collection from persons convicted of drug, theft and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

SEC. 3. FINDINGS AND DECLARATIONS

A. Prevent Early Release of Violent Felons
1. Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters and other violent criminals should not be released early from prison.
2. Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.
3. Recent changes to parole laws allowed the early release of dangerous criminals by the law’s failure to define certain crimes as “violent.” These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered “non-violent offenders.”
4. As a result, these so-called “non-violent” offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge.
5. Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their post release community supervision, like the gang member charged with the murder of Whittier Police Officer, Keith Boyer.
6. Californians need better protection from such violent criminals.
7. Californians need better protection from felons who repeatedly violate the terms of their post release community supervision.
8. This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.
9. Californians need better protection from such violent criminals. This measure reforms the law to define such crimes as “violent felonies” for purposes of early release.
10. Nothing in this act is intended to create additional “strike” offenses which would increase the state prison population.
11. Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.
B. Restore Accountability for Serial Theft and Organized Theft Rings
1. Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.
2. As a result, between 2014 and 2016, California had the 2nd highest increase in theft and property crimes in the United States, while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was $2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least ten years.
3. Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges’ ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.
4. California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.
C. Restore DNA Collection to Solve Violent Crime
1. Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes including murder, rape and robbery have gone unsolved because DNA is being collected from fewer criminals.
2. DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys that occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.
3. Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.
4. Permitting collection of more DNA samples will help identify suspects, clear the innocent and free the wrongly convicted.
5. This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or are found innocent.

SEC. 4. PAROLE CONSIDERATION

Section 3003 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in strikeout type]
(a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.
(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of
parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee’s permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.
(2) Public concern that would reduce the chance that the inmate’s parole would be successfully completed.
(3) The verified existence of a work offer, or an educational or vocational training program.
(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate’s parole would be successfully completed.
(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:

(A) Last, first, and middle names.
(B) Birth date.
(C) Sex, race, height, weight, and hair and eye color.
(D) Date of parole or placement on postrelease community supervision and discharge.
(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.
(F) California Criminal Information Number, FBI number, social security number, and driver’s license number.
(G) County of commitment.
(H) A description of scars, marks, and tattoos on the inmate.
(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.
(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.
(ii) City and ZIP Code.
(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.
(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.
(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate’s residence location for use with a Geographical Information System (GIS) or comparable computer program.

(N) Copies of the record of supervision during any prior period of parole.

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate’s tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or his or her designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.5, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:

(1) A violent felony as defined subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.5, 12022.7, or 12022.9.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-
half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim’s or witness’ actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k)(l) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include all records of supervision, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETs) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

Section 3040.1 is added to the Penal Code to read:

(a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of this Code and the rulemaking authority granted by Section 5058 of this Code, the following shall be defined as “violent felony offenses”:

(1) Murder or voluntary manslaughter;
(2) Mayhem;
(3) 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;
(4) Sodomy as defined in subdivision (c) or (d) of Section 286;
(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a;
(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288;
(7) Any felony punishable by death or imprisonment in the state prison for life;
(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55;
(9) Any robbery;
(10) Arson, in violation of subdivision (a) or (b) of Section 451;
(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289;
(12) Attempted murder;
(13) A violation of Section 18745, 18750, or 18755;
(14) Kidnapping;
(15) Assault with the intent to commit a specified felony, in violation of Section 220;
(16) Continuous sexual abuse of a child, in violation of Section 288.5;
(17) Carjacking, as defined in subdivision (a) of Section 215;
(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1;
(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22;
(20) Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1;
(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;
(22) Any violation of Section 12022.53;
(23) A violation of subdivision (b) or (c) of Section 11418;
(24) Solicitation to commit murder;
(25) Felony assault with a firearm in violation of subsections (a)(2) and (b) of Section 245;
(26) Felony assault with a deadly weapon in violation of paragraph (1) of subdivision (a) of Section 245;
(27) Felony assault with a deadly weapon upon the person of a peace officer or firefighter in violation of subdivisions (c) and (d) of Section 245;
(28) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;
(29) Assault with caustic chemicals in violation of Section 244;
(30) False imprisonment in violation of Section 210.5;
(31) Felony discharging a firearm in violation of Section 246;
(32) Discharge of a firearm from a motor vehicle in violation of subsection (c) of Section 26100;
(33) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;
(34) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;
(35) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;
(36) A felony hate crime punishable pursuant to Section 422.7;
(37) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;
(38) Rape in violation of paragraphs (1), (3), or (4) of subdivision (a) of Section 261;
(39) Rape in violation of Section 262;
(40) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;
(41) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;
(42) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;
(43) Abduction of a minor for purposes of prostitution in violation of Section 267;
(44) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;
(45) Child abuse in violation of Section 273ab;
(46) Possessing, exploding, or igniting a destructive device in violation of Section 18740;
(47) Two or more violations of subsection (c) of Section 451;
(48) Any attempt to commit an offense described in this subdivision;
(49) Any felony in which it is pled and proven that the Defendant personally used a dangerous or deadly weapon;
(50) Any offense resulting in lifetime sex offender registration pursuant to Sections 290 through 290.009.
(51) Any conspiracy to commit an offense described in this Section.
(b) The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.

Section 3040.2 is added to the Penal Code to read:
(a) Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole Hearings shall consider all relevant, reliable information about the inmate.
(b) The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.
(c) In reaching this determination, the hearing officer shall consider the following factors:
   (1) Circumstances surrounding the current conviction;
   (2) The inmate’s criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented;
   (3) The inmate’s institutional behavior including both rehabilitative programming and institutional misconduct;
   (4) Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies;
   (5) The inmate’s past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation;
   (6) The inmate’s past and present attitude about the crime;
   (7) Any other information which bears on the inmate’s suitability for release.
(d) The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:
   (1) Multiple victims involved in the current commitment offense;
   (2) A victim was particularly vulnerable due to age or physical or mental condition;
   (3) The inmate took advantage of a position of trust in the commission of the crime;
(4) The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime;
(5) A victim suffered great bodily injury during the commission of the crime;
(6) The inmate committed the crime in association with a criminal street gang;
(7) The inmate occupied a position of leadership or dominance over other participants in the commission of the crime, or the inmate induced others to participate in the commission of the crime;
(8) During the commission of the crime, the inmate had a clear opportunity to cease but instead continued;
(9) The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison;
(10) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;
(11) The inmate was on probation, parole, post release community supervision, mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense;
(12) The inmate was on any form of pre- or post-conviction release at the time of the commitment offense;
(13) The inmate’s prior history of violence, whether as a juvenile or adult;
(14) The inmate has engaged in misconduct in prison or jail;
(15) The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.

(e) The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:
(1) The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims;
(2) The inmate lacks any history of violent crime;
(3) The inmate has demonstrated remorse;
(4) The inmate’s present age reduces the risk of recidivism;
(5) The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release;
(6) The inmate’s institutional activities demonstrate an enhanced ability to function within the law upon release;
(7) The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense;
(8) The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission;
(9) The inmate has a minimal or no criminal history;
(10) The inmate was a passive participant or played a minor role in the commission of the crime;
(11) The crime was committed during or due to an unusual situation unlikely to reoccur.

Section 3040.3 is added to the Penal Code to read:
(a) An inmate whose current commitment includes a concurrent, consecutive or stayed sentence for an offense or allegation defined as violent by subdivision (c) of Section 667.5 or 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
(b) An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
(c) An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
(d) For purposes of Section 32 of Article I of the Constitution, the “full term” of the “primary offense” shall be calculated based only on actual days served on the commitment offense.

Section 3040.4 is added to the Penal Code to read:
Pursuant to subsection (b) of Section 28 of Article I of the Constitution, the Department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The Department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The Department shall consider the safety of the victims, the victims’ family, and the general public when making a determination on early release.

(a) Prior to conducting a review for early parole, the Department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.
(b) The prosecuting agency shall have the right to review all information available to the hearing officer including, but not limited to the inmate’s central file, documented adult and juvenile criminal history, institutional behavior including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.
(c) A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.
(d) All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.
(e) Responses to the Board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate’s eligibility for early parole review or consideration.
(f) The Board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the Nonviolent Offender Parole decision within 10 days of the decision being made.
(g) Within 30 days of the notice of the final decision concerning Nonviolent Offender Parole Consideration, the inmate and the prosecuting agencies may request review of the decision.
(h) If an inmate is denied early release under the Nonviolent Offender Parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early Nonviolent Offender parole consideration for two (2) calendar years from the date of the final decision of the previous denial.

Section 3041 of the Penal Code is amended to read:
(language added to an existing section of law is designated in underlined type and language deleted is designated in strikeout type)
(a)(1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate’s minimum eligible parole date for the purposes of reviewing and documenting the inmate’s activities and conduct pertinent to parole
eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing. 

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligibility date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b)(1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings...
will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

Section 3454 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in strikeout type]

(a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person’s program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender’s risk of recidivism, and the offender’s criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender’s condition of postrelease supervision.

(c) As used in this title, “flash incarceration” is a period of detention in a city or county jail due to a violation of an offender’s conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary
more frequent, periods of detention for violations of an offender’s postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

(d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

Section 3455 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in strikeout type]

(a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, or if the supervised person has violated the terms of his or her release for a third time, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:

(1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.

(2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court’s discretion.

(b) (1) At any time during the period of postrelease community supervision, if a peace officer, including a probation officer, has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person’s arrest.

(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.
(3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.

(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.

(d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.

(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person’s initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 5. DNA COLLECTION

Section 296 of the Penal Code is amended to read:

(a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

(1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) Commencing on January 1, 2009, any adult person arrested or charged with any felony offense.

(3) Any person, including any juvenile, who is required to register under Section 290 through 290.009 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.
(4) Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:
   (A) A misdemeanor violation of Section 459.5;
   (B) A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473;
   (C) A violation of subdivision (a) of Section 476a that is punishable as a misdemeanor pursuant to subdivision (b) of Section 476a;
   (D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2;
   (E) A violation of Section 496 that is punishable as a misdemeanor;
   (F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code;
   (G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code;
   (H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243;
   (I) A misdemeanor violation of Section 273.5;
   (J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368;
   (K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code;
   (L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.

(4)(5) The term “felony” as used in this subdivision includes an attempt to commit the offense.

(5)(6) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:
   (1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
   (2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.
   (3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).
(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state’s DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter. However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 6. SHOPLIFTING

Section 459.5 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in strikeout type]

(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) “Retail property or merchandise” means any article, product, commodity, item or component intended to be sold in retail commerce.

(d) “Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(e) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.
Section 490.2 of the Penal Code is amended to read:

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

SEC. 7. SERIAL THEFT

Section 490.3 is added to the Penal Code to read:

(a) This section applies to the following crimes:
(1) petty theft;
(2) shoplifting;
(3) grand theft;
(4) burglary;
(5) carjacking;
(6) robbery;
(7) a crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368;
(8) any violation of Section 496;
(9) unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.
(10) Forgery.
(11) The unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e.
(12) Forgery of an access card pursuant to Section 484f.
(13) The unlawful use of an access card pursuant to Section 484g.
(14) Identity theft pursuant to Section 530.5.
(15) The theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

(b) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal
property taken exceeds two hundred fifty dollars ($250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

c) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 8. ORGANIZED RETAIL THEFT

Section 490.4 is added to the Penal Code to read:

(a) “Retail property or merchandise” means any article, product, commodity, item or component intended to be sold in retail commerce.

(b) “Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(c) Any person, who, acting in concert with one or more other persons, commits two (2) or more thefts pursuant to Sections 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars ($250) and unlawfully takes such property during a period of one hundred eighty days (180) is guilty of organized retail theft.

(d) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.

(f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.

(g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 9. AMENDMENTS

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings and declarations of the Act and is passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 10. SEVERABILITY

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 11. CONFLICTING INITIATIVES

(a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and post release community supervision, DNA collection, or theft offenses shall appear on the same statewide ballot, the
provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.
B. The Governor’s 2018 Budget for Public Safety

**Department of Corrections and Rehabilitation**

The Governor’s budget emphasizes continuing progress on efforts to manage the prison population consistent with the federal court order to maintain that population at 137.5% of the correctional system’s design capacity. Despite the state taking the initiative with AB 109 (2011), and the separate development of Proposition 47 (2014), which reclassified a host of felony offenses as misdemeanors, in late 2016 CDCR’s adult inmate population projections indicated the prison population would continue to increase by 1,000 inmates per year. This frustrated the state’s goal of adhering to the federal court’s directive. To maintain compliance with the court-ordered population cap, the Governor sponsored Proposition 57, providing inmates with incentives in the form of good time credits for significant rehabilitation programming, granting courts discretion as to whether young offenders should be tried as adults, creating a parole consideration process for non-violent offenders who serve 100% of their baseline sentence. The current budget seeks to advance the goals of providing offenders a greater opportunity for rehabilitation, improving offender outcomes and enhancing public safety in the long run.

**Total funding: $12 billion (increase of $599 million over last fiscal year)**

Preliminary Breakdown:
- $11.7 billion General Fund
- $313 million other funds

**Inmate Population**
- Current estimated Average Daily Inmate Population: 130,317 (up 2.1% over what was projected a year ago)
- Adult inmate population projected to decline by 0.2% in 2018-19 to 127,412
- Proposition 57 is estimated to reduce CDCR’s inmate population by 6,300 in 2018-19, increasing to 11,500 in 2020-21. (NOTE: Budget document concedes these numbers are uncertain – in part due to the threat of Police Chiefs-Retailers Initiative, although it is not explicitly mentioned)

**Parolee Population**
- Increase of $23.1 million GF for Adult Parole Operations
- 2017 Budget projected Average Daily Population in 2017-18 to be 47,274
- Current Average Daily Population projection: 46,971 (decrease of 0.6%)
- 2018-19 population projection: 49,794 (increase of 5.1%)

**Division of Juvenile Justice Average Daily Population**
- 2017 Budget projections predicted decrease by 121 in 2017-18, and another decrease by 91 in 2018-19
- Total population of 615 in 2017-18, and 645 in 2018-19

**Rehabilitation Programming Generally**
Budget states rehabilitation funding has “been re-established to prior levels,” but does not put this statement into context. Levels as of when?

Core Rehabilitation Programs:

The following have been extended to all prisons:
- Substance abuse treatment programs
- Cognitive behavioral treatment programs
- Academic education classes
- Career technical education, with additional resources to expand programming slots
- Arts-in-Corrections programs
- Transitional preparations courses focused on job readiness
- Community College courses with in-person instruction

Additional Programs (not claimed to be system wide):
- Implementation of TV-based education program for those unable to attend in-person instruction
- Programming grants intended to encourage non-profit providers to expand their programs
- Expansion of programs tailored to long-term offenders
  - Substance abuse disorder mentor certification
  - Cognitive behavioral treatment for those before Parole Board

Programs Addressing Post-Release Wrap-around Services
- Cal-ID program providing released inmates with state ID cards
- Pre-enrolling inmates into Medi-Cal prior to release
- Community Re-entry programs allowing eligible ex-offenders to serve the final year of their sentence in community-based re-entry centers
- New transitional housing program providing meals, support services, peer-driven programming and other resources for first 6-12 months post-release.

Expenditures on Rehabilitation Program Expansions

Career Technical Education: $6.7 million GF for 13 additional sites, 338 additional programming slots – plus $1.5 million GF for equipment replacement. (Education aligned with state boards and national organization certifications)
- Allows capacity for to serve up to 9,100 offenders/year
- Does not include information as to the amount of increase over the last FY.

Self-Help Groups: $2.5 million for Inmate Activity Groups eligible under Proposition 57 for Rehabilitative Achievement Credits.
- Supports expansion from 1, 100 programs in 2016-17 to over 3,000 programs by 2018-19
Rehabilitative Programming Grants: $4 million GF to the Inmate Welfare Fund to provide these grants to Non-Profits with demonstrated track record of success.

Statewide Prison to Employment Initiative
- $16 million GF for this partnership between the California Workforce Development Board, CDCR, the California Prison Industry Authority to provide services for regional and local programming implementation to integrate re-entry and workforce services – also to direct services to ex-offenders

New: Firefighter Training and Certification Program
- $26.6 million GF to establish this 18-month program for ex-offenders for education and training to become a firefighter.
- Creates a training center at the Ventura Conservation Camp for 80 ex-offenders
- CA Conservation Corps to be employer of record, program allows up to 20 CCC members to participate in training courses.
- California Department of Forestry and Fire Protection (CAL FIRE) to be in charge of administration, fire training and certification.

Infrastructure Maintenance
- $131.1 million for system-wide infrastructure investments, consisting of:
  o $60.7 million to replace roofs at various facilities
  o $20 million for mold remediation efforts
  o $32.9 million to replace the public safety radio communication system at nine institutions that have not yet upgraded them
  o $17.5 million to replace health care vehicles used to transport inmates to health care appointments outside the prisons

Inmate Medical Care and Mental Health Services
- $3.1 billion GF for health care services programs
  o Mental Health
  o Medical and Dental Care

Federal Receivership Overseeing Prison Medical Care
- Established by federal court in 2005
- To date, the Receiver has transferred oversight of 15 institutions back to the state (roughly half of the prisons)
- Budget includes $2.1 billion for prison medical care, an increase of $12.8 million
  o $8.3 million to complete integration of an Electronic Health Records System
  o $4.5 million to lease automated drug cabinets for controlled substances, and establish a Correctional Clinic Model for non-patient specific medications

Increase to In-Patient Mental Health Treatment Bed Capacity
- $20.1 million to address mental health bed capacity, and resources to monitor health care data reporting and patient referrals
  o $8.7 million for conversion of two existing housing units to allow them to transition between different levels of care
- $6.8 million to add 15 Mental Health Crisis beds and 5 Psychiatric In-patient beds at the California Institute for Women
- $2.4 million to improve patient movement in and out of in-patient treatment beds
- $1.2 million for related utilization management reviews
- $1 million to transfer 20 Mental Health Crisis beds from Northern California to Southern California to address a greater need for treatment beds there

**Juvenile Justice Reform**

**Age of Jurisdiction**
- Budget includes reversal of change made in 2012 Budget Act, which lowered the upper age of jurisdiction from 25 to 23 for youth sent to Division of Juvenile Justice. DJJ will once again have jurisdiction over youth up to age 25.
- This is based on new research on brain development, and juvenile case law re: diminished culpability of juvenile offenders, and will allow a larger universe of youth to access rehabilitative programming designed for young offenders, helping reduce their rate of recidivism upon release.

**Youthful Adult Offender Pilot Program**
- $3.8 million GF allocation for a state pilot program to establish two housing units supporting a Young Adult Offender Pilot Program diverting a limited number of young adult offenders who have committed specified crimes from adult prison to a juvenile facility.
- This is based on the success of a five-county pilot program authorized by SB 1004, Chapter 865, Statutes of 2016 providing housing for youth aged 18 to 21 in juvenile halls rather than county jails.

**Local Public Safety**

**Community Corrections Performance Incentive Grant**
- $106.4 million to continue this successful program, providing incentives for counties to reduce the number of felony probationers sent to state prison

**Post-Release Community Supervision**
- $29 million GF for county probation departments to supervise temporary increases in average daily population of Post-Release Community Supervision offenders as a result of Proposition 57

**Proposition 47 Savings**
- Department of Finance estimates net savings of $64.4 million in 2018-19
- This is an increase of $18.8 million over estimating savings in 2016-17
- Ongoing savings currently estimated to be $69.9 million
Department of Justice

New Sex Offender Registry
DOJ will proceed working with the Attorney General’s office on a funding proposal in the spring to implement SB 384, Chapter 541, Statutes of 2017, which mandates replacement of the lifetime sex offender registry with a tiered registration system beginning January 1, 2021.
MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, III
Attorney General

SUBJECT: Marijuana Enforcement

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 et seq. It has established significant penalties for these crimes. 21 U.S.C. § 841 et seq. These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress’s determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

In deciding which marijuana activities to prosecute under these laws with the Department’s finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys’ Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department’s well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately. 1 This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

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Rescission of Federal Marijuana Enforcement Policy Sends Shock Waves throughout California

January 8, 2018
The U.S. Department of Justice’s Jan. 4 announcement and memo on marijuana enforcement delivered a shock to the industry in California, causing stock prices in the few publicly traded marijuana-related companies to plummet by as much as 50 percent.

However, it is not certain that the new policy will lead to a significant increase in federal enforcement activity.

The memo represents a reversal of federal policy that conflicts with California state law, which expressly provides for local control and home rule in the context of marijuana regulation. This change is especially important for cities that are proceeding with implementation of legalized commercial marijuana sales.

In the Jan. 4 memo to U.S. attorneys, U.S. Attorney General Jeff Sessions specifically rescinded several guidance documents issued by the U.S. Department of Justice pertaining to marijuana enforcement going back to 2009, but most notably the August 2013 Cole Memo and the February 2014 Guidance regarding Marijuana Related Financial Crimes.

The Cole Memo provided guidance to states that legalized cannabis for either medical or adult use. Specifically, it listed eight criteria states should observe if they wished to avoid becoming a target for federal enforcement. They are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

The Justice Department’s Jan. 4 announcement had two immediate effects:

1) Any safe harbor for the marijuana industry that may have existed as a result of recent federal guidance issued under the Obama Administration has come to an end; and
2) Prosecutorial discretion on the part of individual U.S. attorneys in the area of marijuana enforcement has been reaffirmed.

While a total of five guidance documents issued by the U.S. Department of Justice since 2009 were rescinded by Mr. Sessions’ announcement, the two most relevant appear to be the Cole Memo, and the...
Guidance regarding Marijuana Related Financial Crimes. Of these, the latter may be the most important, as it helped identify criteria under which financial institutions could at their discretion accept deposits from the cannabis industry. The rescission of this document may make access to the banking and financial services industry even more problematic for cannabis industry operators than it has been to date, if only because it increases uncertainty for banking institutions.

Cities that have authorized cannabis businesses of any kind to operate within their borders should be aware that the repeal of the Guidance Regarding Marijuana Related Financial Crimes could have significant implications for municipalities seeking to establish a banking relationship for purposes of depositing cannabis tax revenue.

State of California officials responded late last week in a manner that signals that the business of implementing legal marijuana sales in California will continue as planned.

“We’ll continue to move forward with the state’s regulatory processes covering both medicinal and adult-use cannabis consistent with the will of California’s voters, while defending our state’s laws to the fullest extent,” said Bureau of Cannabis Control Chief Executive Lori Ajax.

“In California, we decided it was best to regulate, not criminalize, cannabis,” California Attorney General Xavier Becerra said in a statement. “We intend to vigorously enforce our state’s laws and protect our state’s interests.”

While the state may be gearing up to defend California’s marijuana laws, federal law remains unchanged. Marijuana is a Schedule 1 substance prohibited under federal law. This means state officials have no ability to block federal enforcement action by any of the four U.S. attorneys in California. Last week’s memo did not include an explicit order to U.S. attorneys around the country to open an assault on marijuana businesses. Instead, the Attorney General said he would leave that decision up to each of the country’s 93 U.S. attorneys, which may lead to responses that vary across the country and even within the state. It is important to note that three of California’s four U.S. attorneys occupy their positions on an interim basis — a factor that may have a bearing on how they respond. It is also not yet clear to what degree California’s U.S. attorneys have the interest or resources to pursue enforcement action against legalized cannabis operations in the state.

In general, increasing uncertainty seems to be the overall effect of the U.S. Department of Justice’s announcement — for investors, the cannabis industry, the banking industry, and the states and respective political subdivisions that have legalized cannabis for either medical or recreational use. The memo issued last week did not make a distinction between medical and adult use, or recreational cannabis, raising the question of whether Congress will renew, as it has every year since 2013, the provision in federal law prohibiting the use of federal funds for enforcement action interfering with the implementation of states’ medical marijuana laws. That is the sole action Congress has taken to date that might expressly limit future enforcement action on the part of U.S. attorneys, but it remains to be seen whether Congress will renew what has come to be known as the Rohrbacher-Farr amendment in the wake of last week’s action, or whether Congress will go further.

Of particular note is the fact that Attorney General Sessions has voiced specific concerns about marijuana policies in California. *The Los Angeles Times* reported that in a remark after a news conference last month, for example, he said he was disturbed about California's role as a pot-exporting state, noting that much of the state's crop ends up on the black market.
Next Steps

The League in partnership with other organizations will be in engaged in dialogue with state authorities and the State Attorney General’s office on what steps cities may need to take in the near future.

D. **AB 1578 (Jones-Sawyer) Marijuana: Cooperation with Federal Authorities -- Informational**

League Position: Joint Opposition letter with Police Chiefs is Pending

**Bill Summary:**
This measure prohibits state and federal agencies from using their resources to assist a federal agency to investigate, detect, report or arrest a person for cannabis activity (whether commercial or non-commercial) that is authorized under California law. It prohibits a range of additional activities that could obstruct federal enforcement efforts.

**Bill Description:**
This measure is intended to protect California-based marijuana businesses by expressly prohibiting use of local agency resources, provision of information, responding to requests, or transferring an individual into federal custody, for purposes of marijuana enforcement.

**Background:**
This measure was presented to this committee as an informational item in March 2017. At that time, it was announced that League staff had agreed to an Oppose position and that a joint letter with the Police Chiefs was pending. We were jointly able to slow progress of the bill and it finished the legislative session on the Senate Floor.

Since the announcement January 4th by U.S. Attorney General Jeff Sessions of the repeal of certain administrative safe harbors created under the Obama Administration – notably the Cole Memorandum outlining a path for states that had legalized cannabis for medical or adult use to avoid becoming a federal enforcement priority, and the guidance on Marijuana-Related Financial Crimes – and reaffirming prosecutorial discretion on the part of U.S. Attorneys in this arena, there is increased uncertainty, both for cannabis businesses and the cities that host them.

The more damaging of the two key safe harbors repealed by Mr. Sessions is the Marijuana-Related Financial Crimes document, commonly known and the FinCen Guidance. That repeal may make it more difficult for cities to identify a financial institution that is willing to accept their deposits from cannabis-related tax revenues.

Against this background, staff brings this bill back to the Committee for a fresh look.

As a matter of policy, the League has taken the position that the approach of this legislation is fundamentally flawed. Our opposition has been based on the belief that the best method to minimize federal enforcement in California on the cannabis front is to create and support the most robust regulatory and enforcement system possible, and signal to the Fed that this state is capable of policing its own house. It is not to adopt a posture that in a sense, defies the federal government and its enforcement authority in the controlled substances arena.

However, in light of the fear and uncertainty triggered by Mr. Sessions announcement, staff believed it prudent to have the Committee review this legislation once more. The following is worth noting:
- Mr. Sessions’ announcement did not alter federal law. Cannabis was a Schedule 1
  controlled substance prohibited by the federal government both before and after his
  statement.
- He did not explicitly direct the U.S. Attorneys in California or elsewhere to step up
  enforcement activities against cannabis. Rather his statement reaffirmed their individual
  prosecutorial discretion in this area.
- The safe harbors that existed under the Obama Administration are repealed, but what
  that means for future federal enforcement is uncertain.

The State of California, via its initiative process, made medical marijuana legally available to its
residents when it approved Proposition 215 in 1996. Senate Bill 420 (2003) created the Medical
Marijuana Program and created a voluntary medical marijuana card program administered by the
Department of Public Health. In 2015, Governor Brown signed the Medical Marijuana
Regulation and Safety Act into law, creating a statewide regulatory structure for the first time
since Prop. 215 was enacted. In 2016, California voters approved Proposition 64, legalizing
marijuana for recreational use by adults.

The federal government has been inconsistent in its reaction to California’s evolution toward
legalization. Most recently, during the summer of 2013, guidance was provided in the form of
the Cole Memorandum, named for James Cole, the Deputy U.S. Attorney General who penned
it. The Cole Memo laid out eight enforcement priorities that could trigger federal enforcement
action:
  - Preventing the distribution of marijuana to minors;
  - Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs,
    and cartels;
  - Preventing the diversion of marijuana from states where it is legal under state law in
    some form to other states;
  - Preventing state-authorised marijuana activity from being used as a cover or pretext for
    the trafficking of other illegal drugs or other illegal activity;
  - Preventing violence and the use of firearms in the cultivation and distribution of
    marijuana;
  - Preventing drugged driving and the exacerbation of other adverse public health
    consequences associated with marijuana use;
  - Preventing the growing of marijuana on public lands and the attendant public safety and
    environmental dangers posed by marijuana production on public lands; and
  - Preventing marijuana possession or use on federal property.

AB 1578 raises the same concerns it did a year ago -- that it will serve to provoke federal
enforcement action rather than offer meaningful protection to California businesses, to the extent
that it erects barriers to cooperation with federal authorities on investigations into matters
involving violations of federal law.

The Police Chiefs raised a specific concern about the possibility that a business entity licensed
by the state to conduct cannabis operations could be in full compliance with both state law and
local ordinances, and yet still be in violation of ancillary or unrelated federal laws, such as
racketeering, money laundering, human trafficking, or other controlled substances. AB 1578 as written makes no meaningful distinction or exemption for such criminal investigations, and would prevent state and local law enforcement from cooperation, so long as the person or entity is licensed by the state.

**Fiscal Impact:**
This measure could result in significant costs to local governments in educating their law enforcement and other entities on the required change in the law. It could also trigger further cuts to federal aid in large, unspecified amounts, above and beyond direct aid to law enforcement.

**Existing League Policy:**
The League has no specific policy on the issues presented by this legislation, but has generally been supportive of ongoing communication and cooperation between local, state and federal law enforcement entities in the context of anti-terrorism efforts, organized crime task forces, and other joint task forces involving local law enforcement and federal agencies.

**Support and Opposition:**
Support: Drug Policy Alliance (Sponsor)

Opposition: League of California Cities, California Police Chiefs Association

**Recommendation:**
**OPPOSE.** Given the initial staff analysis of one year ago and the announcement by Attorney General Sessions earlier this month, staff opines that there is more reason, not less, to oppose this measure than there was in early 2017.
Update on $25 Million in Local Siting Grants for Community Re-entry Facilities
FY 2016-2017

For the past two years, the Governor has made available in the Budget, and the California Department of Finance has administered, $25 million for local governments that are willing to host community re-entry facilities for ex-offenders returning from prison.

The purpose of these facilities is to provide housing and wrap-around services during offenders’ transition from prison to resumption of life on the outside with a job and permanent housing.

### Agencies Awarded Grant Funds

<table>
<thead>
<tr>
<th>Local Agency</th>
<th>Award Amount</th>
</tr>
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<tbody>
<tr>
<td>City of Placentia</td>
<td>2,000,000</td>
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<tr>
<td>City of Reedley</td>
<td>560,000</td>
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<tr>
<td>City of Indio</td>
<td>1,949,000</td>
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<tr>
<td>Napa County</td>
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<tr>
<td>Sonoma County</td>
<td>2,000,000</td>
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<tr>
<td>City of Santa Maria</td>
<td>2,000,000</td>
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<tr>
<td>City of Rancho Cordova</td>
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<tr>
<td>Sonoma County #2</td>
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<tr>
<td>City of Delano</td>
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</tr>
<tr>
<td>City of Ukiah</td>
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</tr>
</tbody>
</table>

**Total Awarded** 17,983,600

**OSAE Audit** 500,000

**Remaining Available Funds** 6,516,400
Update on State’s Cannabis Regulations and Legal Commercial Sales

The State of California began issuing licenses for commercial cannabis businesses on January 2, 2018. The state’s track-and-trace system and the system for ensuring proper labelling of all products are not yet online, but businesses are being authorized by the state to engage in legal adult use sales of cannabis.

New Law on Consumption in Motor Vehicles:
Effective January 1, 2018, it is prohibited to consume cannabis in a moving motor vehicle, regardless of whether the individual consuming is a passenger or a driver. This is now a strict liability offense, since consumption itself is prohibited if a person is in a vehicle.

This law avoids for law enforcement the problem of the lack of a specific impairment standard for cannabis. Conservative estimates are that years of research will be required to arrive at such a standard that is both medically sound and admissible as evidence in court.

What follows is a breakdown of the regulations adopted this past November by the Bureau of Cannabis Control within the Department of Consumer Affairs.

Summary: Bureau of Cannabis Control Emergency Regulations

Licensing
- Lays out requirements for Temporary State Licenses (valid for 120 days, renewable for 90-day periods) (Sec. 5001)
- Lays out requirements for Annual State Licenses (Sec. 5002)
- Identifies persons prohibited from holding state licenses (Sec. 5005)
- Application and Licensing Fees, Schedules (Sec. 5014)
- Payment of Fees (Sec. 5015)
- Guidelines for priority licensing
- Licensing criteria, criminal offenses, and criteria for rehabilitation (Sec. 5017)
- Denial of License (Sec. 5021)
- Renewal of License (Sec. 5020)
- Additional grounds for denial of license (Sec. 5018)
- Excessive concentration of businesses (Sec. 5019)
- Licensed Premises, Requirement for diagram (Sec. 5006)
- Regulation of Premises, incl. location, modification, subletting (Secs. 5025 – 5028)
- Surrender/Cancellation of License (Sec. 5022)
- Death/Incapacity of Licensee (Sec. 5024)
- Notification of Changes (Sec. 5023)
- Temporary Licenses; Licensees in Operation at Time of Licensure (Sec. 5052)
- Distributor Transport Only License (Sec. 5315)
- Access to Retailer Premises (Sec. 5400)
- Type 9-Non-Storefront Retailer (Sec. 5414)
- Microbusiness (Sec. 5500)
  - Microbusiness Applications Including Cultivation Activities (Sec. 5501)
Cultivation Plan Requirements (Sec. 5502)
Supplemental Water Source Information (Sec. 5503)
Microbusiness Applications Including Manufacturing Activities (Sec. 5504)
Cultivation Records for Licensees Engaging in Cultivation Activities (Sec. 5505)
Microbusinesses Records for Licensees Engaging in Manufacturing Activities (Sec. 5506)
Cannabis Event Organizer License (Sec. 5600)
Temporary Cannabis Event License (Sec. 5601)
Laboratory License (Sec. 5701)
Laboratory Licensee Application (Sec. 5702)
Provisional Testing Laboratory License (Sec. 5703)

Local Control
Notification of Revocation of Local License, Permit, other authorization (Sec. 5035)
Notification of Criminal Acts or Civil Judgments (Sec. 5035)
License Posting Requirement (Sec. 5039)
Advertising Placement (Sec. 5040)
Age Confirmation in Advertisement (Sec. 5041)
Delivery (Sec. 5415)
Delivery to a physical address (Sec. 5416)
Methods of Delivery (Sec. 5417)
Cannabis Goods Carried During Delivery (Sec. 5418)
Cannabis Consumption During Delivery (Sec. 5419)
Delivery Request Receipt (Sec. 5420)
Delivery Rate (Sec. 5421)
Receiving Shipments of Inventory (Sec. 5422)
Inventory Documentation (Sec. 5423)
Inventory Reconciliation (Sec. 5424)
Record of Sales (Sec. 5425)
Enforcement
Right of Access (Sec. 5800)
Notice to comply (Sec. 5801)
Citations; Orders of Abatement; Administrative Fines (Sec. 5802)
Contesting Citations (Sec. 5803)
Citation Compliance (Sec. 5804)
Minor Decoys (Sec. 5805)
Attire and Conduct (Sec. 5806-5808)
Disciplinary Actions (Sec. 5809)
Interim Suspension (Sec. 5810)
Posting of Notice of Suspension (5811)
Posting of Notice of Revocation (Sec. 5812)
Enforcement Costs (Sec. 5813)
Disciplinary Actions (Sec. 5814)

Security Requirements
Limited Access Areas (Sec. 5042)
• Licensee Employee Badge Requirement (Sec. 5043)
• Video Surveillance (Sec. 5044)
• Alarm System (Sec. 5047)
• Locks (Sec. 5046)
• Security Personnel (Sec. 5045)
• Track and Trace System (Sec. 5048)
• Track and Trace Reporting (Sec. 5049)
  o Loss of Access to Track and Trace (Sec. 5050)
  o Track and Trace Reconciliation (Sec. 5051)

• Requirements for Transition to Regulated Market (Sec. 5029)
  o Maximum product potency for edibles: 10 mg THC per serving (Sec. 5029(a))
  o Child-resistant packaging (Sec. 5029(b)(2))
  o Non-edibles exceeding THC limits (Sec. 5029(b)(3))
  o Licensees must conduct business only with other licensees (Sec. 5032)
  o Criteria for exception to labelling requirements (Sec. 5029(b)(5))
  o Criteria for exception to testing requirements (Sec. 5029(b)(6))
• Employee Age Restriction (Sec. 5031)
• Provides definitions for various terms (ex: “canopy”, “non-volatile solvent”, etc.) (Sec. 5000)
• Defines “owner” in the context of the regulatory structure (Sec 5003)
• Regulates financial interest in cannabis businesses (Sec. 5004)
• Provides details of required landowner approval for cannabis activity (Sec. 5007)
• Provides for surety bond requirement (Sec. 5008)
• Provides guidelines for sovereign immunity for federally recognized tribes (Sec. 5009)
• Storage of inventory (Sec. 5033)
• Significant Discrepancy in Inventory (Sec. 5034)
• Notification of Theft, Loss, Criminal Activity (Sec. 5036)
• Record Retention (Sec. 5037)
• Criteria for CEQA compliances/exemptions (Sec. 5010)
• Destruction of Cannabis Products Prior to Disposal (Sec. 5054)
• Cannabis Waste Management (Sec. 5055)
• Limited Access Area (Sec. 5401)
• Retail Area (Sec. 5402)
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• Cannabis Goods Display (Sec. 5405)
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• Sale of Non-Cannabis Products on Premises (Sec. 5407)
• Live Plants (Sec. 5408)
• Daily Limits (Sec. 5409)
• Customer Return of Cannabis Goods (Sec. 5410)
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• Retailer Packaging and Labeling (Sec. 5412-5413)
• Testing Labs
- Provides definitions (Sec. 5700)
- General Employee Qualifications (Sec. 5736)

- Testing Labs - Sampling Cannabis and Cannabis Products
  - Sampling Standard Operating Procedures (Sec. 5704)
  - General Sampling Requirements (Sec. 5705)
  - Harvest Batch Sampling (Sec. 5707)
  - Chain of Custody (POC) Protocol (Sec. 5709)
  - Laboratory Receipt of Samples Obtained from a Distributor (Sec. 5710)

- Testing Labs - Standard Operating Procedures
  - Laboratory Analyses Standard Operating Procedure (Sec. 5711)
  - Test Methods (Sec. 5712)
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- Testing Labs - Laboratory Testing and Reporting
  - Required Testing (Sec. 5714)
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  - Moisture Content and Water Activity Testing (Sec. 5717)
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  - Certificate of Analysis (COA) (Sec. 5726)

- Post Testing Procedures
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- Laboratory Quality Assurance and Quality Control (Sec. 5729-35)

- Employee Qualifications
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- Non-Cannabis Distribution Activities (Sec. 5300)
- Storage of Batches for Testing (Sec. 5302)
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