

**PUBLIC SAFETY POLICY COMMITTEE**

**Wednesday, September 5, 2012**

**10:30 a.m. – 12:00 p.m.**

**Room: Marina Salon E**

**Marriott Marquis and Marina**

**San Diego, CA**

**A G E N D A**

**I. Welcome and Introductions**

**II. Public Comment**

**III. Annual Conference Resolutions (Attachment A)**

*Action Items*

- Resolution #1. Fines and Forfeitures.
- Resolution #2. Internet Crimes Against Children.
- Resolution #5. Emergency Management Mission for California Cities.

**IV. November 2012 Ballot Measures (Attachment B)**

*Action Items*

- Proposition 34. Death Penalty Repeal: “Savings, Accountability, and Full Enforcement (SAFE) for California Act.”  
*Speaker in Support – Natasha Minsker, Manager, Yes on 34 Campaign*  
*Speaker in Opposition – Anne Marie Schubert, Supervising Deputy District Attorney, Sacramento County*
- Proposition 35. Human Trafficking/Mandatory Sex Offender Registration: “Californians Against Sexual Exploitation (CASE) Act.”  
*Speaker in Support – TBA*
- Proposition 36. Repeat Felony Offender Sentence Revisions. “Three Strikes Law Reform Act of 2012.”  
*Speaker in Support – TBA*  
*Speaker in Opposition – Mike Reynolds, author of Three Strikes Law*

**V. Adjourn**

**REMINDER:** The 2012 policy committee appointments will end at the close of the Annual Conference; appointments for 2013 can be requested thereafter. Members seeking appointments for 2013 are urged to contact their incoming department, division, or affiliate president immediately following the Annual Conference to request reappointment. A presidential appointment from the League’s incoming president may also be requested, although members are encouraged to first exhaust appointment opportunities through their division or department presidents. These requests should be sent c/o Meg Desmond, 1400 K Street, Sacramento, CA 95814 or via e-mail: [mdesmond@cacities.org](mailto:mdesmond@cacities.org). Please include a brief bio. If you have questions regarding the appointment process, please call (916) 658-8224, send an e-mail to [mdesmond@cacities.org](mailto:mdesmond@cacities.org), or visit our website: [www.cacities.org/polcomm](http://www.cacities.org/polcomm)

*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.*

**RESOLUTION REFERRED TO PUBLIC SAFETY AND REVENUE & TAXATION POLICY COMMITTEES**

- ◆1 **A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Source: City of Glendora

Referred to: Public Safety and Revenue & Taxation Policy Committee

Recommendation to General Resolutions Committee:

**WHEREAS,** the primary purpose of criminal and traffic laws is to improve safety for the public, where the cost involved to implement enforcement falls primarily upon local law enforcement agencies throughout the State; and

**WHEREAS,** if State laws are to be effectively enforced then local cities must have a fair revenue structure to pay the cost of making arrests and issuing citations for criminal and traffic violators; and

**WHEREAS,** the significant inequity in the amount cities receive in relation to the full cost of a citation and/or arrest results in an unfair distribution of revenue to cities that are generated by court fines, fees, surcharges, penalties and assessments levied on offenders; and

**WHEREAS,** the current inefficiencies in the system makes it practically impossible for cities to insure transparency and effectively audit, administer and manage public funds that are generated by cities and distributed by the State and County; and

**WHEREAS,** to adequately protect and serve the public during this time of declining revenue and deteriorating services the inequities in the system needs to be changed; and

**WHEREAS,** court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements; and

**WHEREAS,** once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed by the court has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections; and

**WHEREAS,** the current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected; and

**WHEREAS,** Counties and the State have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed; and

**WHEREAS**, in December 2011 at the request of the Glendora Police Department the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the City of Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit were sent to collection or warrants. Based on those results, the city received an average of \$21, while the State and County received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the State and County's share of 86.75%; and

**WHEREAS**, issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the time of a records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation currently is between \$82 and \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery; and

**WHEREAS**, officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the State issuing citations due to the complexity and "Priority of Distribution" they must follow from the State of California. "Priority Distribution" is triggered when a court reduces a fine for a citation. This process prohibits Judges from reducing penalty assessments and thus the only discretion Judges have in reducing fines, fees and costs is to reduce the base fine, or city portion, of the total fine. This process has a significant impact on the amount of money cities issuing the citation will receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priorities on the distribution list and often find themselves receiving significantly less share-or no share after deducting State and County fees and surcharges; and now there let it be

**RESOLVED** by the General Assembly of the League of California Cities, assembled in San Diego on September 7, 2012, that the League of California Cities calls upon the State Legislature and Governor to:

1. Create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations;
2. Enact legislation that changes the "Priority Distribution" mandate so cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations; and
3. That any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed, not just from the city base fine.

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**Background Information on Resolution No. 1**

**Source:** City of Glendora

**Background:**

Court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected.

Once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts, depending on the fine, fee, surcharge or penalty assessment imposed by the court and California has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different government code.

County and state have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed.

At the request of the City of Glendora, in December 2011, the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit had been sent to collection or warrants. Based on those results, the city received an average of \$21, while the state and county received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the state and county's share of 86.75.%

Issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation that is currently between \$82 about \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery.

Officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the state because when a court reduces a fine it triggers a process called "Priority Distribution." This process prohibits Judges from reducing penalty assessments imposed by the county and state and thus the only discretion that Judges have in reducing fines is to reduce the Base Fine (City Portion) of the total fine. This mandate has a significant impact on the amount of money cities issuing the citation receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priority on the distribution so often they find themselves receiving significantly less share-or no share after deducting state and county fees and surcharges.

The primary cost to implement enforcement falls upon local law enforcement agencies throughout the state. This Resolution calls upon the State Legislature and Governor to create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations. In addition, legislation should be developed and passed that changes the "Priority Distribution" mandate so the cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations and that any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed.

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### **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214  
Committee: Public Safety Policy Committee

Staff: Dan Carrigg, Legislative Representative, (916) 658-8222  
Committee: Revenue and Taxation Policy Committee

**Summary:**

This Resolution urges the League of California Cities, through legislative or administrative means, to clarify the authority for cities to audit the distribution of court imposed fines, fees, penalty assessments and administrative costs for criminal and traffic violations.

It also urges the League to seek legislative changes to the “Priority Distribution” statutory formula so that cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations. The current statutory formula allows reductions to the base fine but maintains the same level of penalty assessments, based upon the full penalty charge.

Finally, any reductions that may occur in fines, fees, assessments or costs determinations should be equally distributed from the total fine imposed, not just from the city base fine.

This Resolution raises several policy questions:

- 1) Should cities have the authority to request audits and receive reports from a county or the state on the local share of revenue resulting from criminal and traffic violation penalties?
- 2) Should cost-recovery be a driving factor in setting monetary penalties for criminal or traffic violations?
- 3) Should reductions (as ordered by a judge) to the fines owed by violators be taken just out of the base fine, or should the base fine and related penalty assessments be reduced proportionately?

**Background:**

In California, criminal offenders may have additional penalty assessments made to their base fines. These penalty assessments are based on the concept of an “abusers fee,” in which those who break certain laws will help finance programs related to decreasing those violations. For example, drug and alcohol offenses and domestic violence offenses are enhanced by special assessments on fines that directly fund county programs designed to prevent the violations. All other criminal offenses and traffic violations are subject to penalty assessments that are used to fund specific state programs.

According to the Resolution sponsor, the City of Glendora, the court-ordered collection of penalty fines and additional assessments, as well as the subsequent revenue distribution, is a complex system where few audits are conducted to determine if cities are receiving their share of collections. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities.

The League recently held in-depth policy discussions related to audit authority in light of the misconduct charges against the City of Bell in 2011. The League convened a technical working group to review audit legislation and administrative efforts by the State Controller’s Office. Following the work of this group, the League Board adopted principles supporting transparent, accurate financial and performance information. (See “Existing Policy” section below.) However, these principles did not address expanding cities’ audit authority over the state, counties, or other public agencies.

The sponsors state that there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed, there are more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections.

Generally, the base fines for criminal and traffic citations are significantly lower than the additional penalty assessments levied by the state and counties. In some instances, the penalty assessment for state and local

programs can be three or four times the amount collected by the city or county agency that issued the citation through their local enforcement authority. The amount each program account receives is based on a statutory formula. For example, if a driving under the influence (DUI) fine is \$1000, specific dollar amounts proportionate to the base fine are added under six different code sections for a total price tag of \$3,320 for the offense.

Some examples of program accounts receiving penalty assessment revenues include Peace Officer Standards and Training (POST), victim witness protection and services, court security, court construction, forensic laboratories for DNA identification, and automated fingerprint identification. The impact of programs largely funded, if not solely funded, by penalty assessment revenue casts a wide net of stakeholders including counties, sheriffs, district attorneys, public defenders, fish and game wardens, victim advocates, and access to the judicial system advocates. Cities are also partial benefactors of penalty assessment funded programs related to law enforcement.

For the last three decades, this policy area has been under great scrutiny and study but with little reform taking place. The recommendations from past studies and reports to consolidate penalty assessment accounts or their collections efforts, which would require legislative action, have likely not gained traction because of the inevitable loss of revenue for the specific programs and the affected interest groups.

In 1986, the Legislature enacted Senate Concurrent Resolution 53, requiring the Legislative Analyst Office (LAO) to study the statutory penalty assessments that are levied by the courts on offenders and the state programs that the funds support. The completed 1988 study found a complicated system of collection and distribution of penalty funds. The LAO was unable to fully identify the source offenses that generated penalty revenues because of limitations in most county collection systems.

In 2005, the California Research Bureau issued a report for the Assembly Public Safety Committee on county penalty assessments that drew similar conclusions. They stated the complexity of the system means poor revenue collection, disproportionate justice for debtors, and undermines the usefulness of fines as a punishment or deterrent. They recommended efforts to streamline and consolidate collections, funding, and appropriations.

After some delay, the state created the Administrative Office of the Court's Court-Ordered Debt Task Force, which is charged with evaluating and exploring means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees. This Task Force has been asked to present preliminary recommendations to the Legislature regarding the priority in which court-ordered debt should be satisfied and the use of comprehensive collection programs. Currently, the League of California Cities has two appointments to the Task Force. However, the Task Force has been put on hiatus and has not met for approximately 12 months due to significant state cuts to the court budget in recent years.

Currently, legislation was introduced this year to address the issue of cities not recouping the costs of issuing citations. The response has been to increase the base fine and not change penalty assessments. Assembly Bill 2366 (Eng) would increase the base fine of "fix-it" tickets from \$10 to \$25 dollars. This has largely been successful in the legislative fiscal committees because with every increase to the base fine for the issuing agency, so increases the state and county share of penalty assessments proportionately.

Lastly, in most instances when the legislature takes into consideration a fine increase, be it for manufacturer product responsibility or criminal acts, the legislature focuses on how the increased fine will alter behavior, not on recovering the costs of enforcing that violation.

**Fiscal Impact:**

Unknown. Potential additional revenue received by cities, if any, would vary based on total citations issued and collected.

**Existing League Policy:**

Related to this Resolution, existing policy offers:

- Cities and the League should continue to emphasize efficiency and effectiveness, encouraging and assisting cities to achieve the best possible use of city resources.
- The League supports efforts to preserve local authority and accountability for cities, state policies must ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fee, etc.

*Audit Principles Adopted by the League Board*

- Given the State already has substantial authority to examine local government financial practices, and recognizes the significant resources required by auditors and local governments to complete audits, additional authority should only be granted to a State agency when there are documented insufficiencies in its existing authority.
- Governmental financial audits and performance audits ensure financial integrity and promote efficient, effective and accountable local government.
- Transparent, accurate financial and performance information is necessary for citizens to have confidence that their interests are being served, and for decision makers to be accountable for ensuring that public funds are spent appropriately and effectively.
- Public trust is inspired when auditors perform their work with independence, objectivity and integrity, remaining free from personal, external and organizational impairments to that independence, both in fact and in appearance.
- Public confidence in government is maintained and strengthened when financial and performance information is collected, managed and reported in accordance with nationally recognized professional accounting and auditing standards.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

- 1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.
- 2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.
- 3) **Build Strong Partnerships for a Stronger Golden State:** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

**RESOLUTION REFERRED TO PUBLIC SAFETY POLICY COMMITTEE**

**2. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES RAISING PUBLIC AWARENESS AND SUPPORTING TOUGHER LAWS RELATED TO INTERNET CRIMES AGAINST CHILDREN**

Source: San Diego County Division  
Referred To: Public Safety Policy Committee  
Recommendation to General Resolutions Committee:

**WHEREAS**, technology has brought significant changes to our society over the past two decades, many of which have had a positive effect on our quality of life while some have threatened the safety and well-being of our young children; and

**WHEREAS**, the internet has made victimization of children easier than ever before; and

**WHEREAS**, the internet has also significantly increased the availability of child pornography, with more than 6.5 million images being shared via the internet, compared to only a few hundred photos less than a generation ago; and

**WHEREAS**, some see viewing child pornography as a “victimless crime,” however these images are never completely eradicated from the internet and the victims continue to have their horrific photos viewed over and over again by pedophiles for sexual gratification; and

**WHEREAS**, in 2007 the National Center for Missing and Exploited Children reported it had identified 9.6 million images and videos of child pornography and believed there were millions more not identified; and

**WHEREAS**, in the 2006 Butner Redux Study, 98 percent of convicted child pornographers had molested children before their capture; and

**WHEREAS**, the United States is the number one producer and consumer of child pornography in the world, with more than 624,000 child pornography users identified nationwide.

**NOW THEREFORE BE IT RESOLVED** by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League of California Cities:

1. Desires to increase public awareness and educate others about the critical issue of internet crimes against children statewide.
2. Requests the League advocate for the State Legislature to adopt tougher laws for child pornographers.
3. Requests the League advocate for additional and more permanent funding for Internet Crimes Against Children Task Forces (ICAC) statewide.

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## Background Information on Resolution No. 2

**Source:** San Diego County Division

### **Background:**

Technology has brought significant changes to our society over the past two decades. While most have had a positive effect on our quality of life, many have threatened the safety and well-being of our young children.

The internet has made victimization of children much easier than ever before. Today, pedophiles can network with one another online, encourage one another to commit crimes against children, and share tips on evading law enforcement. Worse yet, they often use the internet – social media sites, in particular – to find and prey on young children. Many times, these innocent children are lured away from their homes by these perpetrators and never seen again.

The internet has also significantly increased the availability of child pornography. More than 6.5 million child abuse images are being shared via the internet today. Before this technology was in place, the number of photos available numbered in the few hundreds.

While some see viewing child pornography as a “victimless crime,” nothing could be further from the truth. One study showed that 98 percent of convicted child pornographers had molested children before being captured (Butner Redux Study, 2006).

Additionally, these images can never be completely eradicated from the internet once they are placed online. Therefore, victims continue to suffer the irrevocable damage of knowing their horrific photos are being viewed over and over again for sexual gratification by pedophiles.

Many believe these horrendous crimes happen mostly in other countries. Sadly, the United States is the number one producer and consumer of child pornography in the world, and American children are the primary victims. More than 624,000 child pornography users have been identified nationwide and thousands of these reside in San Diego County.

While the internet is exploited by these predators to harm children, it ironically is the same tool used by law enforcement to track down and arrest these criminals.

Your help is urgently needed to secure resources for this effort, increase public awareness, work to support tougher laws and educate others on this critical issue. While San Diego has one of the nation’s 61 ICAC task forces, its six trained investigators are overwhelmed with cases due to funding shortfalls.

With your help, these predators can be taken off the street and our children will be safer. Here is what needs to be done:

**Change state law.** The current "wobbler" (misdemeanor and felony) wording should be eliminated. All child pornography charges should be made a straight felony.

**Strengthen sentencing.** State sentencing on child pornography cases needs to be more in line with federal sentencing.

**Toughen discovery statutes.** State discovery statutes should be amended to comply with the Adam Walsh Act. Child pornography is contraband that is easily reproduced and should be treated as such.

**Change pornography evidence rules.** Stop the practice of giving copies of child pornography evidence to the defense. Instead, provide the defense a secure area where they can view the evidence but not take

procession of it.

**Strike current law about possession/distribution of child pornography.** Currently, state law allows for a defendant's conviction for possession and distribution of child pornography to be set aside if he/she has complied with all probation conditions, pursuant to Penal Code Section 1203.4.

**Strengthen disclosure laws.** If applying for any job other than public office, licensure by any state or local agency, or for contracting with the state lottery, a convicted possessor of child pornography does not need to disclose their prior conviction. That allows people who have been convicted of possessing or dealing in photos of child exploitation to get closer to children. PC 1203.4 already has exceptions for convictions of PC 286(c), 288, 288a(c), 2813.5, 289m, felony 261.5(d) and 42001(b) of the Vehicle Code. These convictions may not be set aside per PC 1203.4 and must always be disclosed. PC 311.1, 311.2, 311.3, 311.4, 311.10 and 311.11 should be added to the list of charges to which this type of relief does not apply.

**Update reporting laws.** The existing mandatory reporting law should be updated to include librarians and computer technicians.

**Provide permanent funding for ICAC.** Significantly more permanent funding is needed for Internet Crimes Against Children Task Forces (ICAC's). They are tasked with investigating crimes against children involving electronic devices. The crimes include child pornography, child molestation and peer-to-peer bullying. ICAC task force's are severely undersized and underfunded to keep up with the magnitude of the growing problem.

**Increase public awareness.** Public awareness of the issue needs be heightened particularly to parents and children as well as all public officials and the community in order to protect our children against these unspeakable crimes.

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## **League of California Cities Staff Analysis on Resolution No. 2**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214  
Committee: Public Safety Policy Committee

### **Summary:**

This Resolution seeks to increase public awareness of the prevalence of internet crimes against children. To help promote this goal, the Resolution requests the League of California Cities advocate for legislation that creates tougher laws for child pornographers and provides additional, more permanent funding for Internet Crimes Against Children (ICAC) Task Forces.

### **Background:**

According to the Resolution sponsors, the U.S. Census Bureau (2005) estimates that there are over 24.5 million internet users in the United States between the ages of 10 and 17. They cite that the rapid growth of internet accessibility has brought forth helpful tools for our children and youth. Unfortunately, it has also brought with it the increased potential for online victimization including unwanted exposure to sexual material, unwanted sexual solicitations, and online harassment.

The Internet Crimes Against Children (ICAC) Program was created to help federal, state and local law enforcement agencies enhance their investigative responses to offenders who use the internet, online communication systems, or computer technology to sexually exploit children. The program is funded by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The program is a national network of 61 coordinated task forces representing over 3,000 federal, state, and local law

enforcement and prosecutorial agencies. These agencies are engaged in proactive investigations, forensic investigations, and criminal prosecutions.

In FY 2009, ICAC Program received \$25 million under the Omnibus Appropriation Act to support ICAC task forces, training, and technical assistance. The ICAC Program received an additional \$50 million through the **American Reinvestment and Recovery Act** to support ICAC task forces, training, technical assistance, and research. In each of the past two fiscal years, the program received \$30 million nationally.

Existing California law addresses the policy area extensively in the areas of solicitation, pornography, and harassment with additional penalties often levied when the victim is a minor less than 14 years of age. Internet-based crimes against minors have been a popular topic in recent legislative proposals especially as new web-based technology is brought into the market. Legislation has included both increased penalties and greater protections or remedies for victims.

**Fiscal Impact:**

Unknown. No direct fiscal impact to city general funds.

**Existing League Policy:**

Related to this Resolution, existing policy offers:

The League believes that the children of California must be recognized as our state's most valuable resource. Their development, education, and well-being are key to our state's future. Further, it is essential that each child have the support needed to become a productive citizen in the world of the 21<sup>st</sup> Century.

The League supports the promotion of public safety through stiffer penalties for violent offenders.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

- 1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.
- 2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.
- 3) **Build Strong Partnerships for a Stronger Golden State:** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

**RESOLUTION REFERRED TO PUBLIC SAFETY POLICY COMMITTEE**

**5. A RESOLUTION CALLING FOR AN EMERGENCY MANAGEMENT MISSION FOR CALIFORNIA CITIES**

Source: League Public Safety Policy Committee

Referred To: Public Safety Policy Committee

Recommendation to General Resolutions Committee:

**WHEREAS**, emergency management is a basic responsibility of city government and a fundamental duty of all city employees; and

**WHEREAS**, prepared, disaster resilient communities save lives, prevent injuries, protect property, promote economic stability, and rapid recovery; and

**WHEREAS**, employees who have a family plan and supplies will be more likely to stay at work or come to work after an emergency incident; and

**WHEREAS**, the National Incident Management System (NIMS) provides guidelines and requirements to ensure a national coordinated emergency response system, including training requirements; and

**WHEREAS**, the Standardized Emergency Management System (SEMS) provides the foundation for California cities to ensure a state-wide coordinated, standardized emergency response system. SEMS is intended to be flexible and adaptable to the needs of all emergency responders in California; and

**WHEREAS**, emergency managers are responsible for promoting and encouraging personal, family and community preparedness and readiness. It is critical to focus on and support public education and training to ensure that the public understands that government entities may need time to recover from disaster situations, and to spread the message that disaster resilience, or the ability to recover from a disaster situation, requires participation from the whole community; and

**WHEREAS**, The League of California Cities (League) recognizes that cities, counties and the state do not have the reserves to support residents with food, water, and other necessary supplies after an “emergency event”. Now, therefore let it be

**RESOLVED**, at the League General Assembly, assembled at the League Annual Conference on September 7, 2012, in San Diego, that the League encourages cities to actively pursue employee and resident emergency preparedness. In addition, the League encourages cities to actively engage residents in emergency preparedness programs that promote creating a family plan, including having supplies of food and water, in the promotion of self-reliance.

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**League of California Cities Staff Analysis on Resolution No. 5**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214

Committee: Public Safety Policy Committee

**Summary:**

This Resolution seeks to create a clear statement of support for emergency preparedness in the League of

California Cities existing policy and guiding principles. Specifically, it requests that the League encourages cities to actively pursue employee and resident emergency preparedness and to engage residents in emergency preparedness programs that promote creating a family plan, that includes provisions for supplies of food and water, in the promotion of self-reliance, with the ultimate goal of creating “disaster resilient” cities.

**Background:**

This resolution was brought to the Public Safety Policy Committee by that committee’s Emergency and Disaster Preparedness Subcommittee to create a clear statement of support for emergency response, management, and recovery efforts as a community. While the League has extensive policy that supports related activities, there is no explicit statement of support in the existing policy or guiding principles.

In addition, numerous articles in *Western City Magazine*, the League’s monthly publication, have featured case studies and best practices about emergency response and disaster preparedness. This topic has been a key component of the Public Safety Committee’s work program for the last five years.

**Fiscal Impact:**

Unknown. This Resolution does not seek to create new requirements for the League or cities. Possible costs to cities that take steps to educate community members about disaster preparedness could be off-set by future limited damage and loss of life or injury due to those preparedness efforts.

**Existing League Policy:**

Related to this Resolution, existing policy provides:

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

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 disaster recovery legislation that includes mitigation for losses experienced by local government.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

**PUBLIC SAFETY POLICY COMMITTEE**  
**November 2012 Ballot Measures**

*Note: Full text of the ballot measures may be found online at:*

<http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm>

**1) Proposition 34. "Savings, Accountability, and Full Enforcement (SAFE) for California Act." Death Penalty Repeal.**

**Summary:**

- Repeals the death penalty as maximum punishment for persons found guilty of first-degree murder and replaces it with life imprisonment without possibility of parole.
- Applies retroactively to persons already sentenced to death row.
- Clarifies that persons found guilty of murder are required to work while in prison, with their wages to be applied to any victim restitution fines or orders against them.
- Creates \$100 million "SAFE California Fund" as of January 1, 2013, from the state General Fund, to be distributed to law enforcement agencies including police departments to help solve more homicide and rape cases, through a "fair and equitable distribution formula to be determined by the Attorney General." Would appropriate \$10 million in FY 2012-13 and \$30 million in FY 2013-14, FY 2014-15, and FY 2015-16.

Specifically this ballot measure:

- Makes various findings and declarations related to: unsolved crimes and need for further investment to correct this problem; cost of death sentence compared to life imprisonment; frequency of innocent people being placed on death row and subsequently being executed, and risk for doing so in the future; the need to seek restitution for victims through death row inmates working while incarcerated; and importance of applying the law retroactively to ensure equity and fairness.
- Provides the purpose and intent of the measure is to convict more rapist and murderers; save taxpayers \$1 billion in five years; eliminate the risk of executing innocent people; and to ensure work by convicted inmates contributes to victim restitution payments; and other statements reflected in the findings and declaration section.
- Removes death penalty from possible punishment for first-degree murder and replaces it with life imprisonment without the possibility of parole, or imprisonment from 25 years to life.
- Provides the penalty of life imprisonment without parole if the following circumstances apply:
  - Act committed for financial gain;
  - Prior first or second degree murder conviction;
  - Act committed with bomb or destructive device or poison;
  - Act committed to avoid arrest or escape from lawful custody;
  - Victim was a peace officer, firefighter or federal law enforcement officer, as defined, acting in the course of their duties;
  - Victim was a witness to a crime and was killed for the purpose of preventing testimony from being given or was a juror and was killed to prevent trial participation;
  - Victim was a prosecutor or related local, state or federal position, a judge, or an elected official and act was carried out to prevent the victim from performing their duties;
  - Act was especially heinous or brutal or cruel;
  - Act was committed by means of lying in wait;
  - Act was committed against victim because of race, color, religion, nationality or country of origin;
  - Act was committed while defendant was engaged in an additional felony activity, such as kidnapping, arson, or sexual offenses;
  - Act was conducted by an active member of a street gang to further the goals of that gang; and

- Defendant aided, abetted, solicited but did not actively take part in the murder or had reckless indifference that directly contributed to that murder.
- Creates new work requirements for murder convicts while housed in high security prison for compensation as prescribed by the Department of Corrections and Rehabilitation, pursuant to Penal Code Section 2700. Directs that wages owed for restitution shall be deducted from this pay.
- Makes technical changes to remove the second phase of court proceedings where a trial is held to determine if the death penalty can be sought based on special circumstances.
- Creates the SAFE California Fund for the purpose of supporting programs to increase the rate at which homicide and rape cases are solved. The SAFE California fund:
  - Appropriates \$10 million on January 1, 2013 and \$30 million each fiscal year from FY 2013-14 through FY 2015-16, from the state General Fund.
  - At the direction of the Attorney General, the Controller is to distribute the funds to local law enforcement agencies including police, sheriffs, and district attorney offices.
  - Funds may be used for projects and activities including, but not limited to, staffing positions directly involved in the investigation or prosecution of homicide and sexual offenses, improving forensic facilities for DNA testing, and witness relocation.
  - Distribution of monies will be “through a fair and equitable distribution formula,” developed by the Attorney General.
- Makes new sentencing provisions apply retroactively to any inmate sentenced to death prior to the effective date of this act. Sentencing changes apply automatically.
- Permits the Supreme Court to transfer any pending death penalty appeals to any district of the court of appeals or Superior Court, at the Supreme Court’s discretion.
- Makes the effective date of this act the day following the election.
- Provides that if any portion of the act is found to be invalid, the finding of invalidity only applies to that specific section and no other provisions.

**Background:**

As of July 2, 2012, the California Department of Corrections and Rehabilitation (CDCR) reports there are 723 inmates on Death Row as condemned inmates. California is one of 34 states that authorize the death penalty. Capital punishment has been approved for use in California since 1851 and the practice has faced numerous challenges and revisions since. In more recent history, from 1967 until 1992 there were no executions in California due to various State and United States Supreme Court decisions.

In 1972, the California Supreme Court found that the death penalty constituted cruel and unusual punishment under the state constitution. As a result, 107 individuals had their sentences changed to other than death. In November 1972, nine months after the decision, the California electorate amended the state constitution and overruled the State Supreme Court. In 1973, the United States Supreme Court held that the death penalty was unconstitutional because of the way it was being administered in a number of states.

In late 1976, the California Supreme Court, basing its decision on a United States Supreme Court ruling earlier that year, held that the California death penalty statute was unconstitutional under the Federal Constitution because it did not allow the defendant to present any evidence in mitigation. Following this ruling, 70 inmates had their sentences changed to other than death.

The California State Legislature reenacted the death penalty statute in 1977 and it has been in place since. Of the 97 inmates placed on death row since, 14 have been executed, 20 committed suicide, 57 died of natural causes, and six died of other causes, such as drug overdoses or violent acts.

In 2006, a federal judge halted executions until state prison officials built a new death chamber at San Quentin, developed new lethal injection protocols and made other improvements to delivering the lethal three-drug combination. CDCR submitted those mandated protocols in 2010, which were approved, but have since faced further legal challenges.

Existing law provides that first-degree murder (the deliberate premeditated killing of another person at the same time that other crimes are being committed) is punishable by life in prison with parole possible after 25 years, upon determination by the designated parole board. The death sentence may be applied when special circumstances apply, such as the murder was carried out for financial gain, was especially cruel, or other specific criminal activities were also taking place.

In cases where the death penalty is sought, the trial is divided into two phases: First to determine guilt of murder with special circumstances and second to determine if the death penalty should be imposed. Death penalty verdicts are automatically appealed to the California Supreme Court under existing law. Defendants may also seek an appeal from the United States Supreme Court and finally may request that the Governor reduce their sentence. According to the Legislative Analyst's Office, most legal proceedings where the death sentence is sought will take a couple of decades to complete in California.

**Staff Recommendations:**

Staff recommends discussion with consideration of:

- “No position” because of minimal direct impacts on cities or the League’s mission;
- OR*
- “Oppose” based on existing League policy and previous action by this committee.

**Committee Recommendation:**

**Board Action:**

**Fiscal Impact:**

Direct fiscal impact to cities unknown. Possible new funding available to police departments through the newly created “SAFE California Fund” for the purposes of increasing the rate of solved homicide and rape cases. Fund creates one-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies. Estimated net savings to the state and counties could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty.

**Existing League Policy:**

- The League supports the promotion of public safety through stiffer penalties for violent offenders.
- The League supports policies that promote a victim’s right to seek restitution.
- The Public Safety Committee voted to “disapprove” a 2011 Annual Conference Resolution that would have had the League urge the legislature and Governor to abolish the death penalty and replace the sentence with life imprisonment without parole.

**Comments:**

Arguments from the Sponsors: Supporters argue that eliminating the death penalty ensures that an innocent person is never sentenced to death and Prop. 34 will save the state and local governments millions of dollars by avoiding costly, time consuming court appeals. It will also hold those who commit heinous crimes accountable by holding them in prison for life while they work for money that will go to victims and their families. Finally, it will swiftly bring future killers to justice because new funding will be able to go towards solving those crimes.

Arguments from the Opponents: Opponents argue that abolishing the death penalty is cruel to victims and their families and provides no real savings to California. The death penalty is given in the rarest of circumstances for the most heinous of crimes. Abolishing the death penalty replaces a meaningful punishment – and deterrent – with a lifetime of guaranteed housing, health care, and other services to convicted murderers.

Funding for Cities Not Guaranteed: The measure provides that a new fund, the SAFE California Fund, will be created to supplement police department activities to increase the rate of solving homicide and rape cases. This could be used for staffing, forensic labs, and other direct purposes. However, there is neither formula nor eligibility requirements provided in the ballot measure. Also, there is no funding source for the SAFE California Fund other than the state General Fund. The proponents contend that additional General Fund savings will be realized because of reduced needs to maintain and staff death row facilities and reduced costly court-proceedings for appeal hearings. These savings will likely not be realized immediately but the first \$10 million appropriation is required to be made two months after the ballot measure passes.

The committee should consider the likelihood of the state cutting other funding and programs for benefiting city residents or increase fees or taxes in order to pay for the new fund required by the ballot measure. So while cities may see some additional funding related to this specific area of police work, committee members should consider if it could result in a net loss.

Will Increasing Convictions Reduce Victimization? The new monies that will be made available to local law enforcement agencies under this measure are to be spent on staffing and programs that catch criminals after that act has been committed. While one could argue that by imprisoning a convicted murderer you are removing the opportunity for that person to commit future offenses, there could be more proactive ways for this funding to be spent to reduce victimization and improve public safety.

**Support/Opposition:** *(as of August 17, 2012)*

Support:

- 126 individuals from criminal justice backgrounds, including police chiefs, district attorneys, judges, and prison wardens.
- 46 federal, state, and county, and city government elected officials.
- Various associations including the American Civil Liberties Union (ACLU), California NAACP, California Public Defenders Association, and other criminal justice system and human rights advocates.
- Statewide and regional political parties including the California Democratic Party and California Peace and Freedom Party.
- Other individuals from the faith-based and business communities.

Oppose:

- California Police Chiefs Association
- Peace Officers Research Association of California
- California State Sheriffs' Association
- Pete Wilson, Former Governor of California
- Regional district attorney associations and approximately 32 individual district attorneys
- Regional sheriff associations and approximately 17 individual sheriffs
- Regional police officer associations
- California Republican Party

## **2) Proposition 35. "Californians Against Sexual Exploitation (CASE) Act." Human Trafficking. Penalties. Sex Offender Registration.**

**Summary:**

- Significantly increases criminal penalties for human trafficking, including prison sentences and fines.
- All of the fines collected pursuant to the revised penalties are to be used for victim and law enforcement services.
- Expands definition of human trafficking to include such acts as the creation and distribution of obscene materials depicting minors.

- Requires person convicted of human trafficking (classified as non-labor) to register as sex offender pursuant to current statutes under Penal Code Section 290, the Sex Offender Registration Act.
- Requires sex offenders to provide information regarding Internet access and identities they use in online activities to local law enforcement, including notice within 24 hours if any accounts are added or changed.
- Requires two-hour human trafficking training for all field or investigative law enforcement officers by June 2014 or within six months of assignment to this type of position.
- Prohibits evidence that victim engaged in prior sexual conduct from being used against victim in court proceedings.

Specifically:

- Makes findings and declarations regarding: the need to protect all Californians from sexual exploitation; the prevalence of human trafficking and impacts on children as young as 4 years old; the wide-use of the Internet in conducting trafficking activities; and the need for stronger laws to combat Internet use by predators and stronger sex offender registration to reduce victimization.
- Provides that the purpose and intent is to combat the crime of human trafficking and ensure effective punishment of its perpetrators; protect the rights of human trafficking victims; and strengthen laws on sexual exploitation including sex offender registration requirements to aid law enforcement tracking of convicted sex offenders.
- Under the state Evidence Code, makes evidence that a victim engaged in a commercial sexual act as a result of being a victim of human trafficking is not admissible to prove criminal liability for related activity. The same restrictions apply to protections of trafficking victims to make such evidence or sexual history inadmissible to attack credibility or impeach their character.
- Increases punishment for human trafficking related to labor up to 12 years (up from 5) and a fine not to exceed \$500,000.
- Increases punishment for human trafficking related to sex, for an adult, up to 20 years (up from 5) and a fine not to exceed \$500,000.
- Establishes separate punishment for sex trafficking a minor (defined as less than 18 years old), without using force, with penalties up to 12 years imprisonment, with a fine not to exceed \$500,000. This includes crimes related to creating, distributing, promoting sale of, or transporting obscene images, film, or other depictions of minors.
  - If force is used, maximum imprisonment may be 15 years to life and \$500,000 fine.
  - Aggravating circumstances include age of victim, relationship to trafficker, and victim's disability or handicap if any.
  - Lack of knowledge of minor's age and consent by minor at time of offense are not permitted defenses of the trafficking acts.
- Provides various definitions including coercion, commercial sex act, duress, deprivation of personal liberty, forced labor or services, and serious harm.
- Establishes an additional fine up to \$1 million at the discretion of the court based on the seriousness of the crime, amount of financial gain from the act, and extent of victim suffering and losses resulting from the act.
- Deposits fines collected pursuant to this measure in the Victims-Witness Assistance Fund, to be administered by the California Emergency Management Agency.
  - 70% shall be granted to public agencies and nonprofit corporations providing shelter, counseling and victims services
  - 30% shall be granted to law enforcement and prosecuting agencies in the jurisdiction where human trafficking charges are filed to fund human trafficking prevention, witness protection and rescue operations.
- Requires individuals convicted of human trafficking sex or extortion offenses to register through the Sex Offender Registration Act, pursuant to Penal Code Section 290.
- Requires all registered sex offenders included in the Sex Offender Registration Act provide to local law enforcement written notice of internet service accounts including email, social networking, instant messaging user or screen names, and other services as defined.

- Any changes to online accounts must be provided to local law enforcement within 24 hours of that change.
- Law enforcement agencies shall provide this information to the Department of Justice in a time and manner not specified by this measure.
- Requirements apply retroactively to any individual registered under the Sex Offender Registration Act and becomes effective immediately upon approval of the measure.
- Makes mandatory human trafficking training requirements for all law enforcement officers in either field or investigative positions. Training program has been developed by the Commission on Officer Standards and Training (POST) and provides best practices for communicating with victims, collaborating with federal agents, and appropriate investigative techniques. Course may be completed by telecommunication, video tape instruction, or other instruction method.
  - Current officers in these positions must complete training by July 1, 2014.
  - Officers assigned to these positions after this date must complete the training within six months of assignment.
- This measure may be amended by majority vote of the legislature.
- Provides that if any portion of the act is found to be invalid, the finding of invalidity only applies to that specific section and no other provisions.

**Background:**

According to the California Attorney General’s office, human trafficking is one of the fastest growing industries in the world, and second only to illegal drug trade in terms of economic scale. As a diverse cultural center and popular destination for immigrants with multiple international borders, California is one of the largest sites of human trafficking in the United States.

In recent years, state legislators have introduced a number of legislative proposals increasing penalties for human trafficking, creating new services for victims, and other efforts to reduce victimization. They have fared moderately well in becoming law.

Both federal and state laws provide various prohibitions against human trafficking and associated penalties. The trafficking laws are generally broken down into two categories: sex trafficking and labor trafficking. Under state law, human trafficking is punishable by a prison sentence up to five years with a three year enhancement if the victim is under 18 years old. The base sentence can also be enhanced by six years if great bodily injury occurs. As of March 2012, according the Legislative Analyst’s Office, there are 18 offenders serving time for human trafficking.

Current law, as provided by the Penal Code Section 290, the Sex Offender Registration Act, provides that individuals convicted of a wide-range of sexual offenses that live, work, or attend school in California are required to provide information about their place of residence to the relevant police or sheriff’s department for the rest of their lifetime. Any changes to this information must be provided within five days. Other contact information is not required to be reported or updated at this time.

There have been numerous attempts by the state legislature to create additional sex offender registration requirements related to online activity. None have been signed into law, with most failing to pass of out the fiscal committee review due to potential new costs to the state related to managing the new reporting requirements.

**Staff Recommendation:**

Staff recommends discussion. While the potential additional cost of mandated training and registered sex offender online account tracking should not be overlooked, the policies put forward by this measure follow the League’s position on related public safety issues.

**Committee Recommendation:**

## **Board Action:**

### **Fiscal Impact:**

- Potential one-time local government costs of up to a few million dollars statewide, and lesser additional costs incurred each year, due to the new mandatory training requirements for investigatory and field law enforcement officers.
- Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders.
- Unknown additional costs to state and local agencies for new sex offender tracking and reporting requirements.
- Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims provided by local and state government programs.

### **Existing League Policy:**

- The League supports the promotion of public safety through stiffer penalties for violent offenders.
- The League supports policies that will assist local law enforcement with sex offender management, so long as state-mandated programs provide for full reimbursement to all local agencies.
- The League supports policies that promote a victim's right to seek restitution.

### **Comments:**

**Arguments in Support:** Proponents of the measure offer the CASE Act will further protect the most vulnerable members of our state against human traffickers and requiring sex offenders to register their online accounts with law enforcement will reduce their ability to find new victims.

**Arguments in Opposition:** Opponents of the measure state the CASE Act will create extensive new costs for the state; creates overly broad definitions that are poorly defined and difficult to interpret; too broadly defines what constitutes human trafficking which will make it exceedingly difficult to provide defense for the accused; and the additional sex offender registration requirements could lead to lower compliance while creating no real benefit for law enforcement purposes.

**Open for Amendments:** Unlike many ballot measures, the CASE Act is not a constitutional amendment, which carries additional protections and a much higher threshold for amendments. The CASE Act explicitly provides that any provision may be amended through legislation. This requires only a majority vote from the Assembly and Senate. This provides greater flexibility to the CASE Act provisions, should changes need to be made in the future.

**New Funding for Specific Purposes:** The CASE Act would provide more funding, in amounts to be determined, for reducing human trafficking victimization and increasing services for this victim group. These funds come directly from the newly imposed penalties rather than non-specific General Fund appropriations. However, it is unclear what level, if any, would be appropriated to city police departments, and what protections those funds have against future diversions for other purposes.

**Mandatory Training New Cost for Local Agencies:** This measure changes a voluntary POST training program on human trafficking to be mandatory for any field or investigating officer. For current employees, the training must be completed within 18 months or within six months of a newly assigned position. While this program can be completed through approved distance learning formats, cities should consider how much of an impact the new training requirement and associated time and cost would have on their police departments.

**Voter Support Sought After Failure in the Legislature to Establish Sex Offender Registration Requirement:** In the last few legislative sessions, several bills have been introduced to require registered

sex offenders to provide their information related to internet accounts and online services but those bills were not successful for various reasons. These included possible interference with constitutional freedom of speech protections, additional costs of state implementation, and ineffectiveness of this requirement given that email and social media accounts can be quickly changed. The CASE Act does not provide any funding for the state or local jurisdictions to implement the sex offender registration and reporting requirement.

ROCA the Vote: Due to the ongoing prison overcrowding in state facilities, currently any legislation that proposes to impose or increase state prison terms for specified crimes is reviewed to understand the potential impacts on state facility bed space. In the Senate Public Safety Committee, this is called “Receivership/Overcrowding Crisis Aggravation” or “ROCA.” By using the initiative process, the sponsors are not subject to this analysis that would have been required if the changes to human trafficking sentences were sought through legislation.

**Support/Opposition:** *(As of August 17, 2012)*

Support:

- California Police Chiefs Association
- California Narcotics Officers Association
- Peace Officers Research Association of California (PORAC)
- California State Sheriffs’ Association.
- Over thirty regional law enforcement departments and associations
- Over thirty elected officials from cities, counties, state legislature, state administration, and Congress
- Hundreds of regional and statewide victim advocacy, faith-based, and business community associations and organizations.

Oppose:

- California Attorneys for Criminal Justice
- California Public Defenders Association
- Erotic Services Providers Legal Education and Research Project.

**3) Proposition 36. “Three Strikes Reform Act of 2012.” Three Strikes Law. Sentencing for Repeat Felony Offenders.**

**Summary:**

- Revises “Three Strikes Law” to impose a life sentence only if the third, new felony conviction is serious or violent. If the third, new felony conviction is neither serious nor violent, then the penalty is double the usual term.
- Authorizes re-sentencing for offenders currently serving life sentences if third strike conviction was not serious or violent and the judge determines the offender does not pose unreasonable risk to public safety, among other requirements.
- Maintains the “third strike” life imprisonment penalty if third strike conviction is for certain non-serious or non-violent sex or drug offenses, or those that involve firearm possession.
- Also maintains life imprisonment penalty for felons if prior convictions (first and second strikes) were for rape, murder, child molestation, and other specified felony crimes, even if the new, third conviction is a non-violent, non-serious felony.

Specifically:

- Makes findings and declarations that this act will restore the original intent of the Three Strikes Law, which was to impose life sentences for dangerous criminals such as rapists, murderers, and child molesters.
- States this act will require most heinous offenders to still receive life sentences; maintains shorter sentence enhancement for repeat non-violent, non-serious offenses; Will save Californians tens of

millions of dollars annually by not paying for elderly and low-risk inmates serving life sentences; and prevents the early release of dangerous criminals with reduced sentences due to overcrowding from low-risk, non-serious offenders.

- Provides that an offender with two or more prior serious or violent felony convictions, whose new offense is non-serious and non-violent, receives twice the usual term for that non-serious, non-violent offense (rather than the current 25 to life sentence.) This does not apply if the third (current) offense is one of the following:
  - Controlled substance charge including possession of cocaine, heroin, or methamphetamine based substance; or transport, selling, distribution, or possession of a schedule III, IV, or V substance.
  - Felony sex offense or any felony offense that results in mandatory registration as a sex offender.
  - Use of a firearm or deadly weapon, or if there was intent to cause great bodily harm
- In addition, the reduced sentence enhancement does not apply on a “third strike” if the offender has a previous violent or serious felony that includes the following:
  - Sexually violent offense;
  - Specified sexual acts with a minor under age 14 or age 10;
  - Homicide;
  - Solicitation to commit murder;
  - Assault with a machine gun on a police officer or firefighter;
  - Possession of a weapon of mass destruction; and
  - Any serious and/or violent felony offense that carries a life imprisonment or death sentence.
- Authorizes re-sentencing for offenders currently serving a life sentence if “third strike” conviction was non-serious or non-violent and does not include the aforementioned offenses. Eligibility for sentence reduction or “Post-Conviction Release Proceeding” also requires:
  - The presiding judge determines that the offender does not pose unreasonable risk to public safety. Factors under consideration include criminal history, behavior in prison, and participation in rehabilitative programs.
  - Inmates eligible for resentencing would serve twice the usual term for their third conviction. (Inmates deemed ineligible continue to serve their life term, as originally sentenced.)
- States if any portion of this act is determined to be invalid, then only the invalid portion will be deemed as such and will not affect other portions of the act.
- States that if any conflicting ballot measures are also approved by the voters and by a greater number of voters but later held invalid, then this act will be held as valid and enforceable.
- States that this act shall only be amended by statute that requires two-thirds majority vote of the legislature; by ballot initiative placed on the next general ballot by a majority vote of the legislature; or by statutes that becomes effective when approved by a majority of electors.

### **Background:**

Proposition 184, also known as the “Three Strikes Law,” was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders when convicted of a felony offense. It considered a serious or violent felony offense a “first strike” and created sentence enhancements as follows:

- **Second Strike Offense Doubles Incarceration:** If a person has one previous serious or violent felony conviction, the sentence for any new felony is twice the term otherwise required under a new conviction (regardless if second offense is serious or violent)
- **Third Strike Offense Is Life Term:** If a person has two or more previous serious or violent felony convictions, a third felony offense (regardless if serious or violent) sentence is a life term with parole no earlier than 25 years.

The three types of crimes are infractions, misdemeanors, and felonies. Felonies are the most serious and depending on the classification as a serious or violent crime, they carry either a jail or prison sentence. While nearly all violent felonies are also serious, not all serious felonies are also violent, such as assault with intent to commit robbery. Felonies can also be classified as *neither* serious nor violent, such as grand theft or controlled substance possession.

The California Department of Corrections and Rehabilitation currently houses approximately 135,000 inmates in state facilities. Of those inmates, approximately 33,000 are “second strikers” and 9,000 are “third strikers”

Under the 2011 Public Safety Realignment, all second and third strikers are required to be placed in post-release community supervision. If the second strikers commitment offense is non-serious, they are supervised by county probation officers rather than state parole agents. Third strikers, however, remain under state parole supervision. Post-release community supervision violations may result in either county jail or state prison time, depending on the violation.

**Fiscal Impact:**

No direct city general fund revenue or cost impact. State savings related to prison and parole operations potentially range from \$70 million to \$90 million in the short-term, according to the Legislative Analyst’s Office. State savings could exceed \$100 million annually in the long term. This is achieved because there will potentially be a smaller number of future inmates sentenced to life imprisonment and current state prison inmates could also receive revised, shorter sentences.

Also, state parole costs will likely be reduced, while in turn county probation costs would be increased. This is because under the new sentencing structure additional inmates could be eligible for post-release community supervision, operated by county probation departments, in lieu of state parole.

Additionally, there is an expected short-term increase in state and county costs in the millions to low tens of millions of dollars in the first few years for state court activities and county jail, community supervision, and court-related activities to review current sentences of state inmates.

Finally, the Legislative Analyst’s Office notes that shorter sentences may result in other unknown state and local costs and savings. This is because offenders may need community-based support programs, may commit additional crimes, or may be able to enter the workforce.

**Staff Recommendation:**

Staff recommends discussion and consideration of “no position” in light of previous “no position” stance on prior Three Strikes ballot measures. While existing policy supports stiffer penalties for violent offenders, this measure calls into question application of third strike sentencing for a third conviction that is non-violent and non-serious, with exceptions for drug, sex, and other offenses. The measure should also be reviewed in light of the 2011 Public Safety Realignment implementation and local inmate population management, as well as state prison facility capacity.

**Committee Recommendation:**

**Board Action:**

**Existing League Policy:**

- The League supports the promotion of public safety through stiffer penalties for violent offenders.
- The League took “no position” on Proposition 184, the ballot measure establishing the Three Strikes Law in 1994.
- The League again took “no position” on Proposition 66, the ballot measure effort to revise the Three Strikes Law sentencing structure in 2004.

**Comments:**

Arguments in Support: Supporters offer that revising the Three Strikes Law sentencing formula will save California millions of dollars each year; will ensure space in state prisons for dangerous felons for the

duration of their life sentence; and gives no leniency or reduced sentence option for the most dangerous offenders if they have current or prior rape, murder, or sex offense on their record.

Arguments in Opposition: Opponents argue that the current Three Strikes Law effectively reduced crime by locking up repeat felony offenders; repealing the Three Strikes Law could result in repeat felony offenders being released without any parole or post-release supervision because of new guidelines in the 2011 Public Safety Realignment program; the measure will cost taxpayers more to manage new offenses by the repeat offenders; and sentencing changes, if any, should apply only to *future* convictions, not those already sentenced.

Second Attempt to Reform Three Strikes: In 2004, proponents sought to revise the Three Strikes Law through Proposition 66. Like Proposition 36, Proposition 66 would have required the third conviction to be a violent or serious felony offense to carry 25 years to life imprisonment sentence and offered limited resentencing. In addition, it increased penalties for specified sex offenses involving children. It did not, however, require life sentences without parole for the egregious offenses provided for in the current ballot measure. Prop. 66 failed passage, earning only 47.3% of voter approval.

Does State Prison Sentence Change Mean Greater County Burden? Under the new sentencing provisions of Prop. 36 some inmates may be released to county custody, either to a jail facility or post-release community supervision/probation. However, this measure could also ensure that the most dangerous offenders are able to remain in state prison because there is adequate prison space with lower-risk offenders spending less time in state prison, if they qualify for county supervision. It is unclear what impacts Prop. 36 would have on helping California meet the prison population reduction mandate imposed by the federal Three-Judge Panel last year. It is difficult to determine how many state inmates would be shifted to county supervision and what impact this would have on the federally mandated state prison inmate population reduction.

League History on Three Strikes Ballot Measures: If the League takes a position on Proposition 36 it will mark a change in our previous stance on the Three Strikes Law. In 1994, the League Board of Directors took “no position” on the original Three Strikes Law ballot measure Proposition 184. (The Public Safety Policy Committee recommended a support position.)

In 2004, the Board took “no position” on Proposition 66, the 2004 reform effort, because of the need to focus on Proposition 1A and determined the Three Strikes Law did not have a “compelling municipal interest.” This confirmed the recommendation from the Public Safety Policy Committee. (Note: The ballot measure was reviewed via teleconference with approximately 20 percent of the committee members participating. According to the meeting highlights all participating members strongly supported the staff recommendation to take “no position.”)

The committee should consider if any of the same circumstances apply today. While an important subject matter, the direct impacts to cities are not as easily measurable when compared to other ballot measures up for consideration in November 2012. Further, a position on this measure could possibly detract from League efforts on ballot measures or legislation that have specific and significant impacts on cities’ governance and fiscal authority.

**Support/Opposition:** *(as of August 17, 2012)*

Support:

NAACP

Individual district attorneys, including Los Angeles DA Steve Cooley

Individual police chiefs, including Los Angeles Police Chief Charlie Beck

California Democratic Party

David Mills, Law Professor; Founder, Three Strikes Project

Oppose:

California Police Chiefs Association  
California State Sheriffs' Association  
California District Attorneys Association  
Peace Officers Research Association of California (PORAC)  
Crimes Victims United and other victim advocacy groups  
Criminal Justice Legal Foundation  
Several regional police officer and sheriff associations  
Mike Reynolds, Author of Three Strikes Law  
California Republican Party