



# The Capitol Connection

ADMINISTRATIVE OFFICE OF THE COURTS • OFFICE OF GOVERNMENTAL AFFAIRS

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## Legislative Calendar

September 30	Last day for Governor to sign or veto bills
October 2	Bills enacted on or before this date take effect Jan.1, 2005

## LEBOV HONORED FOR 29 YEARS OF STATE SERVICE



From left to right: Assembly Member Ellen Corbett, Ray LeBov, Bill LeBov, Cindy Z'berg  
(Photo by Erika Johnson)

Office of Governmental Affairs Director Ray LeBov was recognized for 29 years of service to the state in ceremonies at the State Capitol on August 27.

Senator Martha Escutia (D-Whittier) and Assembly Member Ellen Corbett (D-San Leandro), chairs of the Senate Judiciary and Assembly Judiciary Committees, presented LeBov with a joint resolution in their respective houses on the final day of the legislative session. In the Senate chambers, Senator Joseph Dunn (D-Santa Ana) and Senate President pro Tempore John Burton echoed Escutia's comments praising Le-

Bov's effectiveness as the chief lobbyist for the courts. An hour later, Corbett presented the resolution to the applause of Members as Ray's brother, retired judge Bill LeBov and Bill's wife, Cindy Z'berg, looked on.

LeBov announced that he would leave state service, but not the legislative scene, sometime before the end of the year. "I'm only 'retiring' from state service, but not retiring altogether," LeBov told staff. "I'll really miss representing the council, but I'm not going anywhere. You'll see me around the Capitol."

Prior to joining the Administrative Office of the Courts in 1991, LeBov served in several staff counsel positions in the Legislature from 1975 until he became counsel to the Assembly Judiciary Committee in 1979. The resolution recapped significant accomplishments that highlighted Ray's tenure with the courts, including court unification, trial court funding, and major legislation that advanced the Judicial Council's goals for access, fairness, modernization of court management and administration, quality of justice and service to the public. ■

## NEW BUDGET PROCESS FOR THE TRIAL COURTS APPROVED

Included in this year's budget trailer bill legislation (SB 1102) is an important amendment to Government Code section 77202, sponsored by the Judicial Council and strongly supported by Senators Joe Dunn and Dick Ackerman, and Senate President pro Tem John Burton, Speaker Fabian Nuñez, and Governor Arnold Schwarzenegger. This language is intended to partially address the need for stable, predictable trial court funding and the need to protect the base budget from erosion. It is expected to result in major improvements to the way trial court funding is adjusted from one fiscal year to the next. Significant also is that trial court budget requests approved by the Judicial Council now will be submitted jointly to the Governor and the Legislature.

This provision recognizes the independence of the judicial branch and will allow for an adjustment to the judicial branch budget in a manner similar to the way the Legislature, as an independent branch of government, is treated. The adjustment to the budget will be based on the percentage change in the annual State Appropriations Limit, which has ranged from less than 1 percent to more than 9 percent in recent years.

AOC staff will work closely with the Governor, the Legislature, and the Department of Finance to ensure that this legislation is implemented in a manner that achieves its intent and promise. The AOC will convene a budget working group in early fall to participate in discussions for the purpose of resolving implementation details. ■

## COURT MANAGEMENT PROGRAM VISITS STATE CAPITOL



The AOC's Office of Governmental Affairs (OGA) hosted managers and supervisors from courts in Yolo, Napa, Sonoma, Contra Costa, Solano, and San Mateo counties during their "Day in Sacramento" on Wednesday, August 25. The 34-member group included participants and instructors from the Court Management Program (CMP), which is administered by the National Center for State Courts (NCSC) Institute for Court Management.

The full-day itinerary began with a presentation by Dia Poole on OGA's advocacy role on behalf of the judicial branch. The group then visited the State Capitol, where they observed bills being debated during the final hours of the 2003-04 Legislative Session. Granted special permission to be seated in the rear of the Senate chambers, the group was taken by surprise when Senator Joe Dunn (D-Santa Ana) raised his microphone and introduced them to the full Senate. Senate President pro Tempore John Burton welcomed them to the applause of the Senators.



After a round of picture taking on the Capitol steps,

the group headed back to OGA for a presentation by Lynn Holton, Administrative Office of the Courts Public Information Officer, on the courts and the media. During the lunch hour, Drew Liebert, chief counsel of the Assembly Judiciary Committee, used an innovative "quiz" to spark discussion on the Committee's role and inter-relationships of the judicial and executive branches in the legislative process. The day's agenda concluded with panel presentations by the participants that highlighted efforts by their courts to streamline operations and meet budget challenges.

The CMP is a two-part certification program designed specifically to address the training needs of mid-level court managers. According to NCSC, Phase I develops participants' knowledge, skills and abilities in case flow management, information technology management, the Court Performance Standards, fiscal management and human resource management. Phase II is a week-long seminar that combines elements of leadership, management techniques, and specific court issues in a program that provides participants with the necessary knowledge, skills and abilities to achieve their professional goals as court managers. The course concludes with a formal graduation ceremony.

For more information on the CMP Day in Sacramento, contact Dia Poole at [dia.poole@jud.ca.gov](mailto:dia.poole@jud.ca.gov). ■



## CHIEF JUSTICE NAMES NEW POLICY COMMITTEE MEMBERS

Chief Justice Ronald M. George recently announced the appointment of four new members to the Judicial Council's Policy Coordination and Liaison Committee (PCLC): Judge Heather D. Morse, Vice-Chair, Superior Court of Santa Cruz County; Presiding Justice Candace D. Cooper, Court of Appeal, Second Appellate District; Presiding Judge Douglas P. Miller, Superior Court of Riverside County; and David J. Pasternak of Pasternak, Pasternak & Patton in Los Angeles.

The PCLC directs the council's advocacy on legislative matters and represents the council in relations with other entities such as the Legislature, the Governor's Office, the State Bar, specialty bar organizations, and other court-related profes-

sional organizations. The committee's duties include reviewing and recommending proposals for council-sponsored legislation, reviewing legislation sponsored by others and taking positions on behalf of the council, and coordinating with other groups on legislation, initiatives, or other action affecting the judiciary.

California Supreme Court Associate Justice Marvin R. Baxter chairs the committee that also includes Assistant Presiding Judge William A. MacLaughlin, Superior Court of Los Angeles County; Supervising Judge Eric C. Taylor, Superior Court of Los Angeles County; and Alan Slater, Chief Executive Officer, Superior Court of Orange County. OGA provides staff support to the PCLC. ■

## CAPITAL LOSES FORMER CHIEF LEGISLATIVE LAWYER



The capital community is mourning the loss of Bion M. Gregory, 64, the former chief attorney for the California Legislature. Gregory died suddenly on Wednesday, September 8, of apparent heart failure as he prepared to go to work, according to news reports.

Gregory served as the chief counsel for the Senate Judiciary Committee before becoming Legislative Counsel in 1976. He held the post for 25 years, making him the longest serving legislative counsel in the state's history. His office was responsible for the preparation of thousands of bills, amendments, and legal opinions and for representing the Legislature in court. After retiring from the legisla-

tive council's office in 2001, Gregory became a partner in the law firm of Nossaman, Gunther, Knox, and Elliott, where he concentrated on governmental and legislative law and processes.

A Sacramento native, Gregory graduated from Stanford University before serving as a communications officer in the United States Navy during the Vietnam War. He subsequently earned his law degree from Hastings College of Law. Called the "lawyer's lawyer" by colleagues, Gregory served as president of the Sacramento County Bar Association in 2003.

Gregory is survived by his wife, Patty, whom he met in 1978 while both worked in the legislative counsel's office. ■

## RECESS HEARING PLANNED ON CHILD CUSTODY ISSUE

Legislation that would have enacted a statutory process for determining whether a change of custody can be granted when a custodial parent seeks to relocate with a child did not move forward this session. Senator Burton, author of SB 730, requested that the Assembly Judiciary Committee hearing on the bill be cancelled. SB 730 was opposed by the Judicial Council, as well as the California Judges Association and the Family Law Section of the State Bar.

SB 730 was a response to the holding in *In re Marriage of LaMusga*, 32 Cal.4<sup>th</sup> 1072 (2004), which sought to clarify the standard to be used when determining whether a change of custody is appropriate in a case involving relocation. The Judicial Council's opposition to the measure was based on the extent to which it foreclosed necessary judicial discretion, and the need for further examination and analysis of the impact of the provisions contained in the bill on child custody determinations generally.

Although SB 730 did not move forward in this session, the standards that apply when a custodial parent seeks to move with a child are still very much under debate. In his letter to Assembly Judiciary Committee Chair Ellen Corbett, Senator Burton expressed his belief that legislation like SB 730 is needed in California, and his appreciation for her commitment to hold a special hearing on the issue during the legislature's fall recess. Thus we can expect further discussion and legislation addressing this issue in the next legislative session. ■

## TRAFFIC SCHOOL ELIGIBILITY CHANGES ON GOVERNOR'S DESK

Assembly Bill 3049, an omnibus bill related to commercial vehicle safety, was sent to the Governor on August 26, 2004. The bill, authored by the Assembly Committee on Transportation, is intended to bring California law into compliance with the Federal Motor Carrier Safety Improvement Act of 1999.

Of interest to the courts is the bill's modification of existing traffic violator school (TVS) eligibility criteria. Under AB 3049, a court is prohibited from allowing a commercial driver's license holder, or a person who, regardless of driver's license class, commits a Vehicle Code violation in a commercial vehicle, to complete TVS in lieu of adjudicating a traffic offense. This new provision will become effective on September 20, 2005.

The Judicial Council raised concerns about this bill because of the anticipated implementation costs. Although implementation is expected to vary from court to court, courts have already indicated that reprogramming of case management systems, revision to courtesy notices, and changes to court policies and procedures will all be required.

Clean-up legislation may be pursued next session to require law enforcement to include driver's license class and vehicle license class information on notices to appear. This requirement would facilitate screening and help mitigate the costs of AB 3049 for both the courts and the DMV. ■

## REPORTS OF THE CALIFORNIA PERFORMANCE REVIEW ISSUED LAST MONTH

The group assembled by Governor Arnold Schwarzenegger more than six months ago “to examine state government from top to bottom” presented its report in August. The report of the California Performance Review, issued simultaneously to the Governor and the public, contains more than 1,000 recommendations for improving the executive branch of state government. The judicial branch was not the subject of the group’s comprehensive review, but a handful of the recommendations directly affect or may be of interest to the courts in the future if the recommendations are adopted.

- **FEDERAL GRANTS** – General Government Recommendation 07 recommends that the “Governor should immediately consolidate all activities related to determining eligibility for, and receipt of, federal grant money in a special unit within the Governor’s Office of Planning and Research. This unit should develop funding strategies which maximize federal grant funds.”
- **COLLECTION OF COURT-ORDERED FINES** – General Government Recommendation 34 recommends that the Judicial Council “continue with its plan to establish a task force to develop recommendations to simplify the criminal court fine system by consolidating fees, fines, penalties, assessments and surcharges that apply to multiple offenses into a single fine schedule. The Governor should seek legislation to designate an appropriate executive or judicial branch office to be responsible for ensuring that court-ordered debts are appropriately and uniformly collected. Once designated, the entity should work with the Franchise Tax Board’s Court-Ordered Debt Collection Program to ensure that, when appropriate, delinquent court-ordered debts are referred to the program for collection. Other improvements to court-ordered fines should be sought as well.”
- **CONSOLIDATION OF VICTIM SERVICES** – Public Safety Recommendation 04 recommends that a new Division of Victim Services be “created and placed under the proposed Department of Public Safety and Homeland Security. Once consolidated, legislation should be pursued to consolidate some of the ten secondary victim-related state programs in the future.” Public Safety Recommendation 13 recommends that the administration of the victim-witness assistance pro-

gram operated by the Office of Emergency Services be “consolidated into the Victim Compensation Program. Other strategies should be used to improve funding to centers to better assist victims of crime.”

Separately, the Corrections Independent Review Panel, chaired by former Governor George Deukmejian, issued its report, “Reforming the Youth and Adult Correctional Agency.” Recommendation #18 directly affects juvenile courts by granting committing courts sole authority and final review for revoking juveniles’ parole or probation, or for extending the length of stay at the California Youth Authority.

To date, the Governor has not approved any of the reports’ recommendations. Public hearings are scheduled over the next several months to discuss both reports. Both reports, as well as the schedule for the public hearings, can be found at the California Performance Review website at <http://report.cpr.ca.gov/>. The non-partisan Legislative Analyst’s Office has prepared an Initial Assessment of the California Performance Review, which can be found at the LAO website at <http://lao.ca.gov>. ■

### All Bench-Bar Coalition Members!

### The BBC will convene at the State Bar Annual Meeting

Friday, October 8, 2004  
8:30 a.m. – 10:30 a.m.

Hyatt Regency Monterey  
One Old Golf Course Road  
Monterey, California

Please *R.S.V.P.* to  
[Dia.Poole@jud.ca.gov](mailto:Dia.Poole@jud.ca.gov)  
or call (916) 323-3121  
by Wednesday, September 29, 2004

## CAPITOL HEARINGS ADDRESS BALLOT INITIATIVES, CORRECTIONS

The Legislature will hold informational hearings during the recess on several topics of interest to the courts, including three initiatives that have qualified for the November ballot.

***Reforming California Youth Authority: Bringing Juvenile Justice Back to a National Model.*** Select Committee on California Correctional System, Sen. Romero (Chair).

Tuesday, September 21, 2004  
9:30 a.m.  
State Capitol, Room 3191  
Sacramento, California

For more information, see *The Capitol Connection's* April 2004 article on Corrections reform.

***Proposition 65: Local Government Funds, Revenues, State Mandates.*** Joint Hearing of the Assembly and Senate Local Government Committees, Sen. Torlakson and Asm. Salinas (Chairs).

Wednesday, September 22, 2004  
10:00 a.m.— 12 Noon  
State Capitol, Room 112  
Sacramento, California

Proposition 65 requires voters approval for any legislation that provides for a reduction of local governments' vehicle license fee revenues, sales tax powers and revenues, and proportionate share of local property tax revenues. The proposition also permits local government to suspend their performance of a state mandate if the state fails to reimburse the local government within 180 days of a final determination that a state-mandated obligation exists.

***Proposition 69: DNA Samples.*** Joint Hearing of the Assembly and Senate Public Safety Committees, Sen. McPherson and Asm. Leno (Chairs).

Thursday, September 23, 2004  
10:00 a.m.— 2:00 p.m.  
State Capitol, Room 4203  
Sacramento, California

Proposition 69 requires the collection of DNA samples from all felons, adults and juveniles that are arrested for or charged with specified crimes. The proposition further requires that, in five years, DNA samples be taken from adults arrested for or charged with any felony.

***Proposition 66: Limitations on Three Strikes Law.*** Joint Hearing of the Assembly and Senate Public Safety Committees,

Sen. McPherson and Asm. Leno (Chairs).

Monday, September 27, 2004  
10:00 a.m.— 2:00 p.m.  
State Capitol Room 4203  
Sacramento, California

Proposition 66 amends the "Three Strikes" law by requiring that increased sentences be given only for violent and/or serious felonies. Additionally, the proposition redefines what constitutes a violent and/or serious felony, and requires increased punishment for specified sex crimes against children.

***The Inmate Health Care Challenge: Fixing a broken system in light of the Deukmejian Report.*** Joint Hearing of the Select Committee on Governmental Oversight and Select Committee on California Correctional System, Sens. Speier and Romero (Chairs).

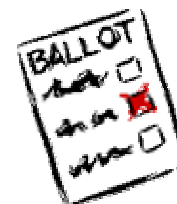
Wednesday, September 29, 2004  
9:00 a.m.  
State Capitol, Room 4203  
Sacramento, California

See *The Capitol Connection's* July/August 2004 article for more information about the Independent Review Panel chaired by former Governor George Deukmejian and the State Auditor's report on inmate health care.

The April 2004 edition of *The Capitol Connection* reported that an initiative on lawsuits alleging violation of state unfair competition laws appeared headed for the ballot. **Proposition 64**, if passed by voters, would limit an individual's right to sue under the unfair competition laws by requiring that the individual actually incurred injuries, and suffered financial or property loss because of, the unfair business practice.

The voter information guides on the Secretary of State's Web site ([www.ss.ca.gov](http://www.ss.ca.gov)) has detailed information on these and other ballot initiatives.

For more information about the legislative hearings, contact Dia Poole in the Office of Governmental Affairs at [dia.poole@jud.ca.gov](mailto:dia.poole@jud.ca.gov). ■



## LEGISLATIVE REVIEW

The following is an update of the second year of the 2003-2004 legislative session on selected bills of interest to the courts.

### COURT OPERATIONS

#### **AB 3079 (Judiciary Committee), as amended July 15, 2004. Court operations**

Authorizes the compensation of retired subordinate judicial officers sitting on assignment in a manner analogous to retired judges. Authorizes the extension of temporary restraining orders set to expire because a court emergency prevents a hearing. Eliminates appellate filing fees in specified mental health and juvenile cases. Provides Court Appointed Special Advocates with access to a social worker's complete report to the court. Clarifies the scope of a Rule of Court concerning attorney contact information in dependency cases. Corrects obsolete statutory references.

**Status:** Enrolled **JC Position:** Co-sponsor (with the California Judges Association)

#### **SB 246 (Escutia), as amended June 24, 2004. Courts: fines and penalties: collection**

Permits acceptance of debit cards and electronic payments for specified payments. Expands the types of debts eligible for a comprehensive collection program and adds three components to the requirements of a program. Authorizes the courts, in addition to counties, to refer court-ordered debt to the Franchise Tax Board. Removes the sunset of the Franchise Tax Board's Court-Ordered Debt Collection program.

**Status:** Chaptered August 30, 2004, No. 380 **JC Position:** Sponsor

#### **SB 749 (Escutia), as amended June 7, 2004. Trial Court Facilities Act clean-up**

Among other things, amends the process for calculating utilities costs. Establishes the Architecture Revolving Fund. Extends timeline for the Judicial Council to adopt a rule of court concerning appeals of specified placement decisions in dependency proceedings.

**Status:** Chaptered August 23, 2004, No. 249 **JC Position:** Sponsor

### CRIMINAL

#### **AB 2019 (Steinberg), as amended August 23, 2004. Mentally competent minors**

Authorizes a court to order that a minor who is alleged to come within the jurisdiction of the court as a status offender or delinquent minor and who may have a serious

mental or emotional disturbance or a developmental disability be referred for evaluation of the disturbance or disability. Specifies procedures for the disposition of a minor who is adjudicated a ward of the juvenile court and who is determined to have a serious mental or emotional disturbance or a developmental disability. Requires the Judicial Council to provide to judicial officers and other public officers and entities, to the extent resources are available, education on mental health and development disability issues affecting juveniles in delinquent proceedings.

**Status:** Dead

#### **SB 1287 (Kuehl), as amended August 23, 2004. Prisoners: incarcerated parents**

Requires the court to advise a defendant at arraignment that if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.

**Status:** Enrolled **JC Position:** Neutral as amended

#### **SB 1744 (Dunn), as amended August 17, 2004. Bail reform**

Enacts numerous reforms to the bail system. Among other things, the bill specifies that when a forfeited bond is not paid within the permitted timeframe and a summary judgment is entered against the bondsman by the court, the amount of the summary judgment issued is due and payable within 30 days of the judgment. On appeal of the summary judgment, this bill requires the full amount of the summary judgment to be deposited with and placed in escrow by the superior court, to be returned along with any interest that has accrued within 30 days of the reversal of that judgment. Also requires the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance within 30 days following the entry of notice of summary judgment. Authorizes the court to impose a fee of up to \$50 for the cost of maintaining the escrow account.

**Status:** Enrolled **JC Position:** Neutral as amended.

### FAMILY

#### **AB 129 (Cohn), as amended June 22, 2004. Juvenile court: dual status children**

Authorizes any county to create a protocol that would permit a minor who meets specified criteria to be designated as both a dependent child and a ward of the juvenile court. Requires that only one agency serve the child at any given time during the case. Requires the Judicial Council to evaluate the results of implementing the protocol, and to report its findings to

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## LEGISLATIVE REVIEW

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the Legislature.

**Status:** Chaptered September 10, 2004, No. 468 **JC Position:** Sponsor

**AB 252 (Jackson), as amended June 22, 2004. Paternity judgments**

Provides that specified judgments or orders establishing paternity may be set aside by the court, upon motion by a party, if genetic testing indicates that the previously established father of a child is not the biological father of the child, and other specified conditions are met.

**Status:** Enrolled

**AB 782 (Kehoe), as amended May 26, 2004. Court records: family law**

Provides that parties may request the sealing of documents in a family law file that contain financial or asset information. Eliminates a form in dissolution matters containing the social security numbers of the parties. Authorizes parties to redact their social security numbers from documents filed with the court, with specified exceptions. Requires the Judicial Council to make form changes to effectuate these changes.

**Status:** Chaptered June 7, 2004, No. 45

**AB 2148 (Diaz), as amended July 2, 2004. Family law proceedings**

Establishes new structure for ordering a party to pay the costs of the other party's legal costs in specified family law proceedings. Authorizes the court to make spousal support orders under the Domestic Violence Protection Act (DVPA). Requires the court when determining whether to make custody, visitation, or support orders under the DVPA to consider whether failure to make the order will affect the safety of the petitioner.

**Status:** Chaptered September 10, 2004, No. 472

**AB 2228 (Garcia), as amended June 29, 2004. Child custody investigations: release of information**

Requires family, juvenile, and probate courts in child custody, welfare, and guardianship proceedings, to share upon request, all available information the court deems necessary to make a determination regarding the best interest of a child, as specified. Authorizes the release of juvenile court file information to probate investigators and court appointed child custody evaluators.

**Status:** Enrolled **JC Position:** Support

### JURIES

**SB 1673 (Romero), as amended April 12, 2004. Grand juries: selection**

Provides that if a judge rejects a person from serving on one of the delineated grand juries, the judge shall issue a written explanation of the reasons for the rejection, as specified. Deletes the provisions of law giving a judge the authority not to select names from the list prepared by the jury commissioner.

**Status:** Dead

### JUVENILE DELINQUENCY

**SB 1151 (Kuehl), as amended March 16, 2004. Juvenile crime**

Adds to the factors to be considered by the juvenile court in a fitness hearing the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter that may affect the circumstances and gravity of the offenses.

**Status:** Vetoed **JC Position:** Support

### TRAFFIC

**SB 1269 (Morrow), as amended June 16, 2004. Traffic violators: Judicial Council report**

Requires the Judicial Council, by June 1, 2005, to collect information and compile a report on how courts work with traffic violator schools, home study programs and Court Assistance Programs (CAPs), and the fees charged by the CAPs. Also requires the Judicial Council, by June 1, 2005, to recommend approaches to setting a fiscal policy for CAP fees charged to traffic violators who attend traffic schools.

**Status:** Enrolled

**AB 3049 (Assembly Transportation Comm.), as amended August 23, 2004. Commercial vehicle safety**

Specifies that a court may not order or permit a commercial driver's license holder to complete traffic violator school in lieu of adjudicating any traffic offense. Similarly, specifies that a court may not order or permit a person, regardless of driver's license class or seriousness of the offense, to complete traffic violator school in lieu of adjudicating any traffic violation that occurred in a commercial motor vehicle.

**Status:** Enrolled **JC Position:** Oppose unless amended and funded

Governor Schwarzenegger has until September 30, 2004, to sign or veto bills.■

## RIPPED FROM THE HEADLINES



"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from *The Capitol Connection*.

### **"Urgent Bill On Sex Predators" *San Francisco Chronicle* (August 11, 2004)**

Governor Arnold Schwarzenegger is expected to sign an urgent bill requiring sex predators to be released to counties where they committed their crimes.

Legislators want to gird for the half-dozen or so sex predators expected to be released in California in the next year. They want to head off the confusion and inter-county feuding that has followed the release of the first three inmates from the state's sexually violent predator program.

"I don't think anyone will put out a welcome mat," said Assemblyman Simon Salinas, D-Salinas, author of the bill. "We're all going to have to face this in our counties. But at least we can have a fair standard and work together."

### **"Return To Form Expected From Davies" *The Recorder* (August 12, 2004)**

When John Davies picked judges for Gov. Pete Wilson, he relied on a network of secret committees that pre-screened candidates and recruited certain lawyers to apply for judicial posts.

Now that Gov. Arnold Schwarzenegger has tapped Davies to counsel him about judicial picks, it wouldn't be a surprise if Davies assembled a similar set of advisers to vet prospective judges, insiders say. The legal experts whom Davies puts on the panels will be an important clue about what types of judges Schwarzenegger is looking for, they say.

"The question really becomes, what is the composition of those [local] committees?" said state Sen. Joe Dunn, D-Santa Ana.

"Will it be a representation of the legal committee in that area of the state? Or will it be a bunch of Republican lawyers" who will lobby to put fellow party members on the bench, he asked.

Officially, the state Judicial Nominees Evaluation Commission is charged with vetting prospective judges, and local bar groups provide input and background checks too. But judicial appointment secretaries have routinely relied on the advice of trusted local lawyers -- especially in urban areas that are flooded with applicants.

When Davies served under Wilson, he often used a group of local Republican lawyers and judges to screen candidates.

### **"Bill On Sealing Victim-Witness Data Goes To Governor" *Los Angeles Times* (August 25, 2004)**

Despite opposition from open-government advocates, a bill that would allow prosecutors to keep an unlimited amount of personal information about crime victims and witnesses from the public passed the state Senate unanimously Wednesday and is headed to the governor's desk.

Under the latest version of the bill, prosecutors and courts in all California counties would be required to establish their own policies to black out certain identifying information about witnesses and victims from reaching public court files.

Proponents say the intent of SB 58, which had also cleared the Assembly without opposition, is to protect witnesses and victims from harm and identity theft, and strikes a fair balance between the public's right to know and an individual's right to privacy.

Opponents argue, and some legal scholars agree, that the bill leaves too much room for prosecutors and the court to decide what is confidential and how it should be kept that way. Their biggest fear is that it could lead to a systematic sealing of all police reports, making it difficult for the news media and the public to monitor the justice system.

Public access to police reports in California varies from county to county, and in some cases, from courthouse to courthouse. News organizations and 1st Amendment watchdogs have argued for years that the reports should be available to anyone after a judge sees them. But prosecutors and police contend that doing so might jeopardize victims and witnesses.

### **"Passing Of Torch Leaves Some In The Dark" *The Recorder* (August 26, 2004)**

Don Perata, the state senator from Oakland tapped by the Democrats to replace term-out John Burton as president pro tem Tuesday, was once a high school teacher. And unlike his rival for the job, state Sen. Martha Escutia, D-Norwalk, he doesn't have much of a record in areas of concern to lawyers and court officials.

He's been perceived by both sides of the tort reform debate as more moderate than Escutia, voting for plaintiff-friendly legislation behind the scenes as opposed to actively advocating for it as she has done. Prosecutors expect he will be strong on public safety issues, and court officials are optimistic that he will be attuned to their concerns.

As the majority leader, Perata has been "someone Sen. Burton could go to and trust on consumer issues," said Consumer Attorneys of California President James Sturdevant. "In that context, we have not had the kind of legislative authorship of

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## RIPPED FROM THE HEADLINES

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Martha Escutia or Sheila Kuehl, [D-Santa Monica], who have been very public with their leadership on a variety of issues, from civil justice to unfair competition."


Sen. Dick Ackerman, an Irvine Republican, has a similar assessment. "I think he is not so much a consumer attorney advocate as perhaps Martha Escutia would have been," he said.

"We look forward to working with him to restore more balance to the system," said John Sullivan, president of the business-backed Civil Justice Association of California.

### "Defining Time For Governor" *Los Angeles Times* (August 27, 2004)

In a series of rapid-fire votes, Democrats who control the Legislature are openly challenging Gov. Arnold Schwarzenegger and handing him tricky decisions that could define the political philosophy of his administration.

When the Legislature ends its 2004 session — as soon as today — Schwarzenegger could face legislation that pits senior citizens against pharmaceutical companies, unions against employers who send jobs overseas, car buyers against car dealers, and minimum-wage earners against businesses.

 Schwarzenegger's decisions over the next month — as he signs or vetoes hundreds of bills — will give California a clearer definition of the governor's political philosophy and his connections to special interests that helped finance his election and ballot campaigns. Is he a business-friendly Republican? A moderate? A Republican in name only?

### "Gov. Vetoes Bill On Juvenile Crimes" *Los Angeles Times* (September 1, 2004)

Gov. Arnold Schwarzenegger vetoed a bill Tuesday that sought to help judges decide which juvenile crimes were serious enough to merit prosecution in adult court.

In a statement, Schwarzenegger said the bill would "seriously compromise public safety" by preventing some of California's most dangerous juvenile offenders from being tried as adults.

The bill's author, state Sen. Sheila Kuehl (D-Santa Monica), said "the governor made a mistake." She said her measure, which had extensive support, was merely designed to guide judges and eliminate ambiguity in the law. Advocates of the bill agreed, and said they were puzzled and surprised by the governor's veto.

The bill, SB 1151, centers on a process in Juvenile Court that determines whether a minor 14 or older should be prosecuted as an adult. Under current law, a judge reviews five criteria in making that decision, including the degree of criminal sophistication shown by the minor, the minor's record and "the cir-

cumstances and gravity of the offense."

Kuehl's bill sought to clarify for judges how to evaluate the "circumstances and gravity" of a crime, requiring them to consider the actual behavior of the minor, the minor's degree of involvement and the level of harm caused by the minor.

Such clarification was needed, she said, because the vague language had led to inconsistencies from court to court in which juveniles were referred for prosecution as adults.

The measure was endorsed by 10 organizations, including the state's association of Juvenile Court judges and the Judicial Council. In a letter, the Juvenile Court judges said the bill would have helped them "better exercise their discretion in determining whether a child" should be tried in adult court.

Initially, the California District Attorneys Assn. took a position of "support if amended." In a March letter, the association said the bill "partially provides much needed cleanup language to correct and clarify" the law. But when Kuehl declined the association's requested amendments, which were unrelated to the purpose of her bill, its support was withdrawn, she said.

On Tuesday, the group's executive director, Dave Labahn, confirmed Kuehl's account but said the association also believed that the bill was a threat to public safety.

### "Paternity Bill Seems Likely To Become Law" *The Daily Journal* (September 1, 2004)

A bill that would make it easier for men falsely named in default paternity judgments to clear their names is close to becoming law, officials said Tuesday.

"I think it has an awfully good chance of being signed," said Janice Rocco, chief of staff to Assemblywoman Hannah-Beth Jackson, the Santa Barbara Democrat who co-wrote AB252.

Rocco said the Child Support Directors Association of California, which represents the agencies that oversee paternity claims, helped write the legislation.

The bill would give a two-year amnesty to men who claim they have been named falsely in default paternity judgments to get the order set aside. The measure also would give men two years to challenge a default paternity judgment, instead of the current six-month appeal window.

Gov. Arnold Schwarzenegger has until Sept. 30 to sign the bill into law. ■

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## PERATA ELECTED SENATE PRESIDENT PRO TEM



Senate Majority Leader Don Perata (D-Oakland) has been selected to succeed Sen. John Burton (D-San Francisco) as the next President pro Tempore. Perata will assume the post in November when Burton, who has held the position since 1998, steps down due to term limits.

The full Senate formally confirmed Perata on a 38-0 vote after he won a hotly contested campaign within the Democratic caucus. Senators Martha Escutia (D-Whittier) and Sheila Kuehl (D-Santa Monica) were the other candidates for the position that was ultimately decided on the third secret ballot. Often regarded as the most powerful position in Sacramento after the governor, the president pro tem's duties include chairing the Senate Rules Committee which, among other things, oversees the operations of the Senate, assigns prized committee chairmanships, and recommends whether to confirm gubernatorial appointments.

A former high school teacher and Alameda County supervisor, Perata was first elected to the Assembly in 1996. Two years later, he won the Senate seat, vacated by now Congresswoman Barbara Lee, which covers much of the East Bay. A skilled fundraiser and author of landmark legislation on assault weapons, mental health, and school reform, Perata is expected to immediately tackle two of the most controversial issues facing the Legislature: the troubled Oakland-San Francisco Bay Bridge project and the expansion of Indian gaming.

*The Capitol Connection* will feature an interview with Sen. Perata in an upcoming issue. ■

### News From the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). To subscribe to these newsletters, contact [pubinfo@jud.ca.gov](mailto:pubinfo@jud.ca.gov).

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# The Capitol Connection

ADMINISTRATIVE OFFICE OF THE COURTS • OFFICE OF GOVERNMENTAL AFFAIRS

“Ripped From the Headlines” highlights news stories of interest including headlines and lead paragraphs, without editorial comment from The Capitol Connection.

## **“Few D.A.s Use New Power To Try Juveniles As Adults” *Los Angeles Times* (August 9, 2004)**

A 4-year-old state law that makes it easier for prosecutors to try juveniles as adults has been used only sparingly by district attorneys, keeping steady the number of youth offenders tried in the adult justice system, lawyers say.

District attorneys in several counties have continued to allow judges to decide in most cases whether juveniles should be prosecuted in adult court. Others have chosen to file adult charges only in cases where they were convinced that a judge would have transferred the youth out of juvenile court anyway.

Proposition 21, passed in March 2000 by 62% of California voters, gave district attorneys rather than judges the power to determine whether juveniles accused of certain serious crimes should face adult penalties. In juvenile court, the harshest penalty that can be imposed is custody until age 25.

## **“Urgent Bill On Sex Predators” *San Francisco Chronicle* (August 11, 2004)**

Governor Arnold Schwarzenegger is expected to sign an urgent bill requiring sex predators to be released to counties where they committed their crimes.

Legislators want to gird for the half-dozen or so sex predators expected to be released in California in the next year. They want to head off the confusion and inter-county feuding that has followed the release of the first three inmates from the state's sexually violent predator program.

"I don't think anyone will put out a welcome mat," said Assemblyman Simon Salinas, D-Salinas, author of the bill. "We're all going to have to face this in our counties. But at least we can have a fair standard and work together."

## **“Return To Form Expected From Davies” *The Recorder* (August 12, 2004)**

When John Davies picked judges for Gov. Pete Wilson, he relied on a network of secret committees that pre-screened candidates and recruited certain lawyers to apply for judicial posts.

Now that Gov. Arnold Schwarzenegger has tapped Davies to counsel him about judicial picks, it wouldn't be a surprise if Davies assembled a similar set of advisers to vet prospective judges, insiders say. The legal experts whom Davies puts on the panels will be an important clue about what types of judges Schwarzenegger is looking for, they say.

"The question really becomes, what is the composition of those [local] committees?" said state Sen. Joe Dunn, D-Santa Ana.

"Will it be a representation of the legal committee in that area of the state? Or will it be a bunch of Republican lawyers" who will lobby to put fellow party members on the bench, he asked.

Officially, the state Judicial Nominees Evaluation Commission is charged with vetting prospective judges, and local bar groups provide input and background checks too. But judicial appointment secretaries have routinely relied on the advice of trusted local lawyers -- especially in urban areas that are flooded with applicants.

**"New Law Weakens 'Sue Boss' Measure" *Sacramento Bee* (August 13, 2004)**

Gov. Arnold Schwarzenegger has signed a bill weakening the so-called "sue your boss" law, limiting workers' ability to go to court over violations of the state labor code.

Schwarzenegger and Republican lawmakers had pushed for changes to the earlier law, even holding up negotiations on the state budget last month until Democrats agreed to weaken the law. Business groups had complained that workers were filing frivolous suits over issues such as the failure to post the required labor-law signs in the lunchroom.

The governor's signature on the new law means "the most egregious abuses ... have been nipped in the bud," said Matt Tennis, lobbyist for the Associated Builders and Contractors of California.

The new law "restores fairness to labor law enforcement while curbing the lawsuit abuse," said California Chamber of Commerce President Allan Zaremberg in a prepared statement.

The first law, SB 796, was signed by Gov. Gray Davis shortly before he left office last fall after the recall election. It spawned about 60 lawsuits.

Workers' attorneys said they could live with the changes, saying workers can still pursue litigation over the worst labor code violations.

The original law gave workers the right to sue over a broad range of violations. Now, in most cases, they first have to give employers a chance to correct the violations and the state a chance to investigate the problem. In some cases, such as failure to post signs, no lawsuits are permitted.

State Sen. Joe Dunn, D-Santa Ana, wrote the old law, arguing that the state Labor and Workforce Development Agency was too understaffed to police all labor code violations. When confronted with tales of some of the lawsuits, he authored a new bill, SB 1809, to revise the law. Months of negotiations ensued, eventually producing the final form that Schwarzenegger signed.

**"Prop. 69 Expands DNA Database" *The Press Democrat* (August 16, 2004)**

Police, prosecutors back measure; foes warn of risk to civil liberties

Police and prosecutors are backing an initiative that would greatly expand law enforcement's use of DNA, but critics call it a dangerous assault on individual rights.

If Proposition 69 is approved by voters in November, anyone arrested for a felony eventually would be required to provide a DNA sample for the state's crime database.

Currently, state law requires DNA samples from people convicted of certain violent felonies, including murder, kidnapping, sex crimes and robbery.

By adding anyone arrested for a felony, the measure would increase the size of the state's DNA database from about 200,000 samples to more than 1 million within five years.

More than 30 other states have comprehensive databases, and they've solved almost 40 percent of the crimes where DNA samples were in their systems, according to Proposition 69 backers. California solves only about 5 percent of crimes involving DNA.

But Proposition 69 goes far beyond the laws in other states, according to Maya Harris, an attorney for Northern California's ACLU. Only Louisiana requires a DNA sample from anyone arrested for a felony.

The initiative would immediately require all convicted felons to provide DNA samples. By 2009, any adult arrested for a felony would have to give a sample to law enforcement.

#### **“Punishing Start For The Freed” *Los Angeles Times* (August 16, 2004)**

Unlike parolees, who receive state services, the wrongly convicted are left to deal unaided with shattered lives and festering resentments.

No state provides services to so-called exonerees, the nationally growing number of former prison inmates who, thanks to DNA technology, recanting witnesses and other exculpatory forces, are being found innocent of any involvement in the crimes for which they were convicted.

Although a small number may eventually obtain the monetary compensation some states offer, exonerated prisoners get nothing on release but a bit of pocket money. They're left to deal unaided with shattered lives, the enduring suspicion of others and their own festering resentments.

On the other hand, those who never had their convictions overturned – parolees – can receive free employment counseling, housing referrals and physical and mental health services through parole agents charged with helping them rejoin society.

“People don't really recover from this,” said Dr. Lola Vollen, a physician and co-founder of the Berkeley-based Life After Exoneration Program, a year-old organization dedicated to helping the exonerated after they're released.

#### **“Judge ‘Can Take’ Prisons, Governor Says” *Los Angeles Times* (August 17, 2004)**

But Schwarzenegger adds that he prefers to avoid receivership and fix the troubled system.

Governor Arnold Schwarzenegger, ruefully conceding the difficulty of running the state's troubled prison system, said that if a federal judge follows through on a threat to name a receiver to take charge of the prisoners, "He can take it."

"It's no sweat off my back," the governor said Monday at a news conference after completing a tour of Mule Creek State Prison, about 40 miles southeast of Sacramento.

The governor was quick to add that he doesn't expect that to happen. He said he had a "wonderful" phone conversation recently with U.S. District Judge Thelton E. Henderson - who broached the prospect of a takeover in a letter to a top aide to the governor last month - and sought to persuade him that his commitment to improving the prison is genuine.

"He is 100% with us," Schwarzenegger said. "We will work together with him. I have the utmost respect for him, and together we can do it." Judge Henderson's office did not return a call for comment.

Schwarzenegger's remark touched off a swift reaction from critics of the correctional system.

State Senator Jackie Speier (D-Hillsborough), who has led oversight hearings on the Department of Corrections this year, said "It's surprising that the governor would say, 'It's no sweat off my back.' It's like saying, 'We failed and the courts must take over now because we're going to be able to make the reforms.' I can't believe he really thinks that."

#### **"Burton Bill On Parental Relocation Is Off Agenda" *The Daily Journal* (August 17, 2004)**

The leader of the state Senate intends to shelve his proposal to overturn a California Supreme Court decision and make it easier for custodial parents to move away with their children.

Senate President Pro Tem John Burton, D-San Francisco, decided to pull his bill, SB730, following a storm of protest last week from fathers and family lawyers, according to several sources familiar with the situation.

The measure also received strong opposition from the state Judicial Council, the California Judges Association and the State Bar.

The bill would give custodial parents - typically mothers - the right to move with their children and would restrict the right of the non-custodial parents - mostly fathers - to oppose the move.

"It picks one parent over another," said Mary Molinaro, a Sacramento family lawyer who wrote a letter opposing the bill on behalf of the State Bar's Family Law Section. "We came at it from the standpoint that no parent is better than another. One parent shouldn't be disposable and one parent better. The best interests of the child are what matters."

The bill will likely be taken up in a committee hearing this fall, allowing more time for input from opponents and a more careful crafting of the bill's language.

**“Ethics Bill Aimed At Kolkey Nears Governor's Desk” *The Recorder* (August 23, 2004)**

A bill requiring the State Bar to develop rules for ex-judges who appear before their former colleagues appears on its way to becoming law. But questions still linger about whether it provides needed guidelines or is simply a way for John Burton to express his ire with a political opponent.

Drafted by Senate President Pro Tem Burton, SB 1246 requires the development of definitive rules to govern former judges appearing as lawyers. The bill was prompted by an instance last year when the entire Third District bench recused itself before former Justice Daniel Kolkey was to argue a matter that affected an earlier piece of Burton legislation.

Kolkey argues that the issue of judicial recusal is already addressed ~ appropriately, he says ~ by state judicial ethics rules. "It's not a matter of attorney professional recusal," he says.

Burton, however, disagreed, noting in the bill analysis that government code prohibits legislators and senior executive branch officials from appearing before their former colleagues or agencies for a full year and that "a similar restriction should apply to the conduct of former judges."

There didn't use to be a need for rules governing former judges acting as lawyers. Once upon a time, jurists retired as judges. Now "lawyers make so much more money than judges, even at the pinnacle of their career" are returning to their legal roots, said Hawley.

"This is a relatively new issue in terms of its evolution," he said.

**“Governor Pushes For Action On His Last-Minute Legislation” *Los Angeles Times* (August 23, 2004)**

Only days before lawmakers must finish for the year, Gov. Arnold Schwarzenegger has handed them a mountain of work on solar power, Indian casinos, frivolous lawsuits, the San Francisco Bay Bridge and prescription drugs from Canada.

Although lawmakers are eager to tackle some of the issues - and throw in a few more of their own - Schwarzenegger has shaken up the Capitol in the last few days by threatening vetoes of high-profile legislation, introducing last-minute ideas and asking for significant amendments on other bills.

Schwarzenegger has consistently confounded the Legislature by introducing wide-ranging legislation with short deadlines. The new flurry of activity fits a pattern of pushing lawmakers at the last minute in a direction that many don't want to go.

The governor's proposals offer him a way to get bills changed rather than face politically difficult vetoes of legislation that has broad public support. Lawmakers, however, say some of the proposals present them with little time to consider far-reaching policy changes.

The Republican governor once chastised the Legislature for passing bills without proper committee hearings – but now his last-minute demands have lobbyists and lawmakers frantically working with little public oversight before the Aug. 31 deadline.

“We need to get them a calendar and tell them this is not June or July; it’s Aug. 20,” said environmental lobbyist V. John White, who is working on a major solar power initiative that Schwarzenegger unveiled Friday.

“Everybody should be working together sooner and harder.”

The governor’s office defended the late-breaking policy push by saying the Legislature was itself a month late passing the state budget, which diverted everyone’s attention and put them behind. And his office said some issues – such as Indian gambling agreements and cost overruns on the Bay Bridge – emerged only recently, whereas others have been debated in the Legislature for months.

**“Unlike 2003, Legislature Winds Up Session Quietly” *San Jose Mercury News* (August 23, 2004)**

As the legislative session comes to a close, last year's recall-tinged flood of sweeping bills has dwindled to a trickle.

The list of liberal-leaning bills in 2003 stretched from new rights for illegal immigrants and gays to consumer privacy protection, the nation's first electronic waste recycling program and health insurance coverage for more than 1 million Californians. They were all signed by a vulnerable Gov. Gray Davis.

This year, the hot topics are access to cheap Canadian drugs, restrictions on offshoring of jobs and an increase in the state's minimum wage, bills Gov. Arnold Schwarzenegger is unlikely to endorse.

The restrained agenda reflects the change in dynamics now that bills passed by the Democratic-controlled Legislature need the signature of a Republican governor.

Legislators say they were tentative about putting forward more ambitious bills because Schwarzenegger has no political track record and has provided few clues about how he will come down on pending legislation.

**“Court Backs Grandparents' Visitation Right” *The Daily Journal* (August 24, 2004)**

A divided California Supreme Court held Monday that a divorced mother may have no choice but to send her daughter to spend several weeks a year with the parents of her father, even though he has lost all parenting rights.



The high court's majority concluded that a single parent with sole legal and physical custody of a child has a strong say in court but cannot automatically block a judge from ordering visitation rights to grandparents on the other side of the family.

Instead, the justices emphasized that under California law, the grandparents may win such an order if they can show that the child would suffer if their access is cut off. *Marriage of Harris*, 2004 DJDAR 10465.

Three justices on the court's conservative wing voiced concern that Monday's ruling undercuts the fundamental right of parents to exercise decision-making authority over who their children spend time with.

The thorny issue of grandparent visitation has bedeviled courts throughout the country that have tried to balance the rights of parents, children and grandparents in the fallout of divorces and custody disputes.

Thursday's ruling remands the case so that the trial judge can re-evaluate what is best for everyone under Family Code section 3104, which permits grandparent visitation. The father's parental rights were terminated in 2002 while the case was pending before the high court.

For the grandparents to now win, they must overcome a "rebuttable presumption" that continued visitation is not in the 10-year-old girl's best interests.

Writing for the majority, Justice Carlos Moreno rejected Butler's claim that section 3104 is unconstitutional because it intrudes on her child-rearing authority.

"Court-ordered grandparent visitation over the objection of a sole surviving parent implicates the parent's right to the custody and control of his or her child," Moreno wrote. "But the mother in the present case has cited no authority that holds that an order for grandparent visitation that is supported by one of the parents infringes upon the parental rights of the other parent."

#### **“Shift In Inmate Rehab Signaled” *Los Angeles Times* (August 25, 2004)**

A bill to boost education and job training to cut recidivism is approved. Critics decry the cost.

Signaling a sharp turn in attitudes about rehabilitating state prisoners, lawmakers Tuesday approved a sweeping new program to give inmates more schooling and job training to better prepare them for release.

By the slimmest of margins, the state Assembly endorsed a bill aimed at reducing the huge proportion of ex-convicts who commit new crimes or parole violations and wind up back behind bars. If signed by the governor, the bill would trigger “an unprecedented shift” in the mission of the state prisons, an Assembly analysis said.

“Our recidivism rate is enormously high,” said the bill’s author, Sen. John Vasconcellos (D-Santa Clara). “Most of these guys are coming back out to live among us, and it’s in our best interest to do whatever we can to make sure they lead safe, constructive lives.”

One of the tightest votes in the lower house came on the inmate rehabilitation bill, SB 1399, which would dramatically change how most of the state’s 164,000 inmates spend their time.

In recent years, budget cuts have reduced convicts’ access to education programs, with only about one in four inmates finding slots. Critics say such limitations are foolhardy, given research showing lower reincarceration rates for prisoners who attend classes.

In a 2003 report, the nonpartisan Little Hoover Commission faulted the state for poorly preparing inmates for life on the outside and operating a “revolving door” prison system. The report said that when released, 10% of California parolees are homeless, 50% are illiterate, 80% are unemployed, and as many as 80% abuse drugs.

Vasconcellos said his bill would ensure that each inmate’s “shortcomings are addressed constructively in prison, right from the start, so we can help them succeed and stay out of trouble.”

**“Bill On Sealing Victim-Witness Data Goes To Governor” *Los Angeles Times* (August 25, 2004)**  
Despite opposition from open-government advocates, a bill that would allow prosecutors to keep an unlimited amount of personal information about crime victims and witnesses from the public passed the state Senate unanimously Wednesday and is headed to the governor’s desk.

Under the latest version of the bill, prosecutors and courts in all California counties would be required to establish their own policies to black out certain identifying information about witnesses and victims from reaching public court files.

Such information can include birth dates, addresses, telephone numbers, employment, Social Security numbers, mother’s maiden names, employee ID numbers, and bank account and credit card numbers.

Proponents say the intent of SB 58, which had also cleared the Assembly without opposition, is to protect witnesses and victims from harm and identity theft, and strikes a fair balance between the public’s right to know and an individual’s right to privacy.

Opponents argue, and some legal scholars agree, that the bill leaves too much room for prosecutors and the court to decide what is confidential and how it should be kept that way. Their biggest fear is that it could lead to a systematic sealing of all police reports, making it difficult for the news media and the public to monitor the justice system.

“It’s like a secret system.... And from our perspective, what it permits is routine and automatic sealing of these documents, because that’s the easiest way to deal with it,” said Jim Ewert, legal counsel for the California Newspaper Publishers Assn.

Public access to police reports in California varies from county to county, and in some cases, from courthouse to courthouse. News organizations and 1<sup>st</sup> Amendment watchdogs have argued for years that the reports should be available to anyone after a judge sees them. But prosecutors and police contend that doing so might jeopardize victims and witnesses.

**“Passing Of Torch Leaves Some In The Dark” *The Recorder* (August 26, 2004)**

Don Perata, the state senator from Oakland tapped by the Democrats to replace termed-out John Burton as president pro tem Tuesday, was once a high school teacher. And unlike his rival for the job, state Sen. Martha Escutia, D-Norwalk, he doesn't have much of a record in areas of concern to lawyers and court officials.

He's been perceived by both sides of the tort reform debate as more moderate than Escutia, voting for plaintiff-friendly legislation behind the scenes as opposed to actively advocating for it as she has done. Prosecutors expect he will be strong on public safety issues, and court officials are optimistic that he will be attuned to their concerns.

Trial lawyers count Perata as a somewhat silent partner.

As the majority leader, Perata has been "someone Sen. Burton could go to and trust on consumer issues," said Consumer Attorneys of California President James Sturdevant. "In that context, we have not had the kind of legislative authorship of Martha Escutia or Sheila Kuehl, [D-Santa Monica], who have been very public with their leadership on a variety of issues, from civil justice to unfair competition."

Sen. Dick Ackerman, an Irvine Republican, has a similar assessment. "I think he is not so much a consumer attorney advocate as perhaps Martha Escutia would have been," he said.

"We look forward to working with him to restore more balance to the system," said John Sullivan, president of the business-backed Civil Justice Association of California.

**“Mixed Year For Prison Legislation” *Sacramento Bee* (August 27, 2004)**

In a year marked by intense criticism of California's prisons, the Legislature has passed two bills to strengthen independent oversight and approved another that would establish a code of conduct for prison officers as well as a standardized system of discipline for those who break it.

Lawmakers also approved legislation that gives the public a peek into internal affairs investigations, makes it easier to audit the Department of Corrections and increases spending on inmate education.

But a proposal to improve media access to prisoners failed and another that would block accused correctional officers' access to in-process internal investigations appears headed for defeat.

With the threat of a federal court takeover still real for the department, legislators who have pushed the session's reform agenda agree they've barely begun to turn the prison system around. But they think the changes they have enacted are substantial and will endure.

"It's a great foundation for what needs to be done, but it's not comprehensive by any stretch," said state Sen. Jackie Speier, D-Hillsborough, who co-chaired special legislative hearings on corrections earlier this year and sponsored much of the new legislation along with Sen. Gloria Romero, D-Los Angeles. "Much more accountability is needed in the department."

Gov. Arnold Schwarzenegger already has signed the audit bill and is expected to sign the two bills - sponsored by his own Department of Corrections - that add muscle to the Office of the Inspector General's ability to investigate prison wrongdoing.

Schwarzenegger's office would not comment on the other bills produced by the legislative session that could end today, though a spokesman for his Youth and Adult Correctional Agency said the administration and the Legislature are on the same page in wanting to fix prison problems.

"We just have to find the right vehicles to do it," said the spokesman, J.P. Tremblay.

Inspector General Matt Cate, appointed by Schwarzenegger, hailed the bills, which add clout to his office, but said there's still more work to be done to reform the agency.

Critics agreed that there's more work needed, with one calling the bills "baby steps."

#### **"Defining Time For Governor" *Los Angeles Times* (August 27, 2004)**

In a series of rapid-fire votes, Democrats who control the Legislature are openly challenging Gov. Arnold Schwarzenegger and handing him tricky decisions that could define the political philosophy of his administration.

When the Legislature ends its 2004 session — as soon as today — Schwarzenegger could face legislation that pits senior citizens against pharmaceutical companies, unions against employers who send jobs overseas, car buyers against car dealers, and minimum-wage earners against businesses.

Schwarzenegger's decisions over the next month — as he signs or vetoes hundreds of bills — will give California a clearer definition of the governor's political philosophy and his connections to special interests that helped finance his election and ballot campaigns. Is he a business-friendly Republican? A moderate? A Republican in name only?

Until now, California lawmakers have been wary of defying the new Republican governor because voters responded so forcefully to his October recall campaign, and because their own reputations have been battered in polls. That view has changed with a handful of high-profile bills that the governor must now either veto or sign.

"The Legislature is feeling out the governor," said Sen. Jim Brulte (R-Rancho Cucamonga). "Unlike previous governors, he doesn't have a long political history. So the Legislature is passing a number of bills to test and see what the governor will sign and what he will veto."

Margita Thompson, the governor's spokeswoman, said Schwarzenegger and his legislative aides have been working to find compromises with lawmakers this week and "minimize political gamesmanship." She said the governor will look at each bill on its merits. "The prism under which legislation is going to be looked at is going to be on job-creating and the economy," Thompson said. "One of the reasons he was elected in October was to get the state's fiscal house in order."

**“Legislature Wraps Up Difficult, Humbling Year” *Los Angeles Times* (August 29, 2004)**

The Legislature finished an unusually trying year before dawn Saturday. Over eight months, its very existence was questioned and its political virility was mocked while it braced for the retirement of some of its most experienced and effective members.

Lawmakers' arranged marriage with Republican Gov. Arnold Schwarzenegger — courtesy of an angry electorate — prevented majority Democrats from dominating the Capitol's political direction this year as they had often done under Gray Davis. GOP lawmakers, meanwhile, found out that their party's new celebrity leader was less conservative than many of them had expected.

Though 5,823 bills and resolutions were introduced in the two-year session that ended Saturday, major accomplishments were far fewer than in previous years.

"This wasn't a banner year," said Sen. Don Perata (D-Oakland), whose election as the incoming Senate president pro tem last week consumed much of the Democrats' energy during the crunch month of August. "We certainly had many more landmark bills become law in the shadow of the recall than this year," he said.

**“Bill Flurry To Reveal Governor's Politics” *San Jose Mercury News* (August 29, 2004)**

When Gov. Arnold Schwarzenegger returns from his prime-time appearance at the Republican National Convention in New York this week, he will confront an avalanche of bills from the Democratic-controlled Legislature.

How he handles hundreds of issues will provide a more complete picture of the rookie governor's political beliefs and show voters if he is the moderate he claims to be.

Will he side with health insurance companies against women's groups? Will he tap the state's beleaguered budget to prevent teen steroid use? Is he enough of a small-government Republican to veto a passel of big-government bills ~ even one by the Legislature's top Democrat with whom he has grown close?

Schwarzenegger said Friday that he is eager to begin the bill-signing ritual, even as he acknowledged there will be “some bills that will be bogus and others that will be very good.”

“Everyone is threatening me, saying, ‘You have to sign thousands, 500 bills,’ and all this. I am looking forward to it,” he said in an interview moments after a surprise appearance on the Senate floor to thank retiring legislators.

“It will be a great education, number one,” Schwarzenegger said. “Number two, it will be a unique way of solving a lot of the problems.”

In his first nine months in office, the governor has thrived on trying to build bipartisan consensus and making deals that protect his popularity with voters. He opted for borrowing, instead of tax increases or deep spending cuts to plug the state's budget deficit.

But when Schwarzenegger sits down to evaluate bills “he can't operate that way,” said Hoover Institution fellow Bill Whalen, a former Pete Wilson speechwriter and occasional adviser to the governor.

“You have to choose a side, and someone is going to go away unhappy.”

**“State Senate Balks At Paying County, City For Peterson Case” *Modesto Bee* (August 29, 2004)**

A bill that would have provided a financial bailout for the Scott Peterson case died early Saturday as lawmakers wrapped up their work for the year without approving millions of dollars in state aid for local police and prosecutors.

In a marathon session that ended about 3:30 a.m., Senate Democrats held off a final vote on the proposal because of concerns about the potential cost of the trial and investigation into Laci Peterson's disappearance.

The bill would have let the city of Modesto, Stanislaus County and San Mateo County, which is holding the double-murder trial because it was moved after extensive media coverage, tap into a state fund set aside for expensive murder trials in small and medium-sized counties.

Stanislaus County can apply and compete for a partial reimbursement from the \$5 million trial-subsidy fund, but county officials would have to put up a \$1.4 million deductible before receiving state aid.

San Mateo County officials, who don't want to get stuck with a bill for extra security and other courthouse costs, and the Modesto Police Department, which led an estimated \$1 million missing-person search and murder investigation, would have to seek repayment from Stanislaus County. The bill would have guaranteed those agencies a 100 percent direct reimbursement from fatter state coffers.

Under the bill, the state would have picked up the tab for all police overtime, surveillance equipment, travel to Redwood City, expert witness fees ~ even defense costs, now that Peterson attorney Mark Geragos has sought public aid.

But including Modesto in the legislation troubled some lawmakers because a city police agency never has been reimbursed directly for its role in a murder case; only counties have been repaid by the state fund.

Gov. Schwarzenegger included funding for the investigation and trial in his initial budget proposal, but lawmakers stripped it out because of the precedent-setting issue.

**“Council Says It's Time To Add Judges” *The Recorder* (August 30, 2004)**

Saying California needs at least 150 more judges, court leaders vowed Friday to pursue funding from the governor and Legislature to add new trial court slots over the next three years.

Members of the Judicial Council voted to dust off a 2001 blueprint for judicial requests that was tabled due to a worsening budget outlook. Court officials say they are now more hopeful of getting a sympathetic hearing in Sacramento.

There's a new crop of legislative leaders and new budgeting method, court officials point out.

Chief Justice Ronald George said he's comfortable negotiating directly with new Gov. Arnold Schwarzenegger, and that he is confident Schwarzenegger will "listen to our proposals and approve of us bringing them up at this time."

Even so, "I can't predict what our success will be," said George, who noted that it could take more than one year to get the Legislature to approve the funds.

Court officials say the new seats are needed to keep up with the population in some of the state's fastest-growing counties. For example, 23 judges are needed in San Bernardino, 19 more in neighboring Riverside, 14 in Sacramento and 10 in Fresno.

The goal of the plan, said AOC Executive Director William Vickrey, is to "begin to bring the basic resources of our courts up to a more appropriate level." He noted that the population of California has increased 50 percent since 1980.

**“Major Prison Reform Eludes Lawmakers” *Los Angeles Times* (August 31, 2004)**

A few measures pass, but significant changes opposed by guards union are voted down.

It has been a year of top-to-bottom scandal in California's sprawling prison system.

Last month, a federal judge in San Francisco weighed in on the mess, threatening an unprecedented takeover of the prisons. But the Legislature has been cool to calls for a shake-up of the \$6-billion-a-year system.

Despite a series of dramatic hearings by two state senators investigating corrections, lawmakers declined to adopt many substantial prison reforms before closing their legislative session last week.

"A year ago, I believed we had a real window of opportunity to reform the prison system in a drastic way," said Dan Macallair, executive director of the Center on Juvenile and Criminal Justice. "But all we've really had is empty rhetoric. No one has the political courage to take on this system and demand real change."

A handful of prison bills – addressing such things as inmate health care and smoking behind bars – found the votes needed for passage. One measure took aim at the so-called code of silence that protects rogue guards from punishment. Another – considered a long shot for a governor's signature – would force the state to beef up inmate rehabilitation.

But most of the bills will result in mere tinkering with a 164,000-inmate system that needs an overhaul, critics say. Even state Sen. Jackie Speier (D-Hillsborough), who joined fellow Sen. Gloria Romero (D-Los Angeles) in spending much of the year on prison troubles, declared herself unsatisfied.

**“Both Sides Bracing For Battle Over Prop. 64” *The Daily Journal* (August 31, 2004)**

Some political observers contend that the campaign to urge voters to reform the state's Unfair Competition Law may lose - if the electorate knows who is financing it.

But proponents say all they need to do to gain support is tell the public that the law has allowed unscrupulous trial lawyers to get rich filing frivolous lawsuits.

Proponents of the reform initiative, Proposition 64, have the advantage of a \$10 million war chest, said Elizabeth Garrett, a law professor and director of the Initiative and Referendum Institute at the University of Southern California.

Opponents, including environmental and consumer groups, meanwhile, are believed to have less money but may have an attractive message for voters, Garrett said.

Proponents of the initiative ran a few full-page ads in Sacramento last week to counter a last-minute legislative alternative pushed by environmental groups. The bill, SB185 by Sens. Martha Escutia, D-Whittier, and Byron Sher, D-Palo Alto, died in an Assembly committee Friday.

"The business opposition was enough to keep the governor's office from getting behind the bill," said Bill Magavern, a lobbyist for the Sierra Club, one of the bill's supporters.

Proposition 64 would restrict the use of the Unfair Competition Law to those who have suffered some financial harm or injury - not just are threatened by a potential hazard - and would require individuals to seek class status or find a public prosecutor to file a complaint. It would direct any civil penalties collected under public prosecution of the Unfair Competition Law solely for governmental enforcement of consumer protection laws.

**“Bill Would Reopen Prisons To Media” *San Jose Mercury News* (September 1, 2004)**



Gov. Arnold Schwarzenegger says he wants to shine a light into the dark corners of the state's 32 prisons so that the public can find out what goes on behind bars.

His commitment to that goal will be tested this month when he decides whether to sign legislation that would once again allow news reporters face-to-face interviews with prisoners behind bars.

Schwarzenegger, whose wife, Maria Shriver, is a veteran TV reporter, hasn't taken a position on the measure, SB 1164, by Sen. Gloria Romero, D-Los Angeles.

It is being pushed by the California Newspaper Publishers Association, which said in a letter to the Legislature that when reporters were given access "the resulting stories helped initiate important policy changes necessary to achieve the efficient administration of the prison system."

Schwarzenegger has said he had not studied the implications of the measure, which won final legislative passage Friday. But the Department of Corrections opposes the proposal, and Roderick Hickman, Schwarzenegger's corrections secretary, recently voiced reservations after touring Mule Creek State Prison with the governor.

"I don't think that the media glamorization of some of the crimes that the inmates have played upon society need to be reported upon," he said.

The media bill is among more than a half-dozen proposed changes to the embattled prison system that the governor must act on over the next month.

However, Schwarzenegger will not get a crack at a proposal that Romero had labeled the "linchpin" of her prison reform efforts. Senate Bill 1731 was rejected by the Legislature after the prison-guard union lobbied heavily against the bill.

It would have nullified a controversial section of the union contract that allows officers to quickly obtain confidential investigative information, including inmate complaints. Some critics of the union fear this has a chilling effect on investigations - a notion denied by the union.

#### **"Gov. Vetoes Bill On Juvenile Crimes" *Los Angeles Times* (September 1, 2004)**

Gov. Arnold Schwarzenegger vetoed a bill Tuesday that sought to help judges decide which juvenile crimes were serious enough to merit prosecution in adult court.

In a statement, Schwarzenegger said the bill would "seriously compromise public safety" by preventing some of California's most dangerous juvenile offenders from being tried as adults.

He also suggested that the measure would erode a ballot initiative, approved by voters in 2000, that sought to toughen penalties for young criminals.

The bill's author, state Sen. Sheila Kuehl (D-Santa Monica), said "the governor made a mistake." She said her measure, which had extensive support, was merely designed to guide judges and eliminate ambiguity in the law.

Advocates of the bill agreed, and said they were puzzled and surprised by the governor's veto.

"This is totally bizarre," said Carole Shauffer, an attorney with the nonprofit Youth Law Center in San Francisco. "It appears to be a knee-jerk reaction to juvenile crime rather than a thoughtful response to this particular issue."

The bill, SB 1151, centers on a process in Juvenile Court that determines whether a minor 14 or older should be prosecuted as an adult. Under current law, a judge reviews five criteria in making that decision, including the degree of criminal sophistication shown by the minor, the minor's record and "the circumstances and gravity of the offense."

Kuehl's bill sought to clarify for judges how to evaluate the "circumstances and gravity" of a crime, requiring them to consider the actual behavior of the minor, the minor's degree of involvement and the level of harm caused by the minor.

Such clarification was needed, she said, because the vague language had led to inconsistencies from court to court in which juveniles were referred for prosecution as adults.

The measure was endorsed by 10 organizations, including the state's association of Juvenile Court judges and the Judicial Council. In a letter, the Juvenile Court judges said the bill would have helped them "better exercise their discretion in determining whether a child" should be tried in adult court.

Initially, the California District Attorneys Assn. took a position of "support if amended." In a March letter, the association said the bill "partially provides much needed cleanup language to correct and clarify" the law. But when Kuehl declined the association's requested amendments, which were unrelated to the purpose of her bill, its support was withdrawn, she said.

On Tuesday, the group's executive director, Dave Labahn, confirmed Kuehl's account but said the association also believed that the bill was a threat to public safety.

**“Help Available Online For Those Who Can't Afford Lawyer” *The Daily Journal* (September 1, 2004)**

It wasn't that long ago that a person coming to a courthouse for help with a legal problem would get turned away empty-handed.

Workers in the clerk's office would refuse to help fill out forms or give much of any help, saying they were not permitted to give legal advice of any kind.

At times, it was difficult to tell whether the clerks were really following the rules or simply couldn't be bothered with someone who had the temerity to show up without a lawyer.

So it was heartening last week to see the launch of [www.LawHelpCA.org](http://www.LawHelpCA.org), a new Web site dedicated to helping the millions of Californians who cannot afford an attorney and who need help getting through the court system.

The site, which most judges and lawyers can easily reach through a link on the state court's Web site, [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov), is quite remarkable for the scope and depth of legal information it provides the user.

As Chief Justice Ronald M. George pointed out at a press conference Friday in San Francisco, in some counties neither side has counsel in more than two-thirds of the family law filings. That usually means trouble in delay and dissatisfaction on the part of the litigants as well as the courts, which have been ill prepared to deal with pro per litigants.

At Friday's press conference, it was encouraging to see so many judicial and bar leaders present. George ducked out of a Judicial Council meeting next door to give his remarks, and State Bar President Anthony P. Capozzi and incoming president John Van de Kamp journeyed from Fresno and Los Angeles.

As George noted, the idea is to provide "meaningful access, not just access" to the courts and legal services. And, in the end, both the litigants and the courts should benefit.

It's a far - and welcome - cry from the old days of "I'm sorry, I can't help you."

#### **“Paternity Bill Seems Likely To Become Law” *The Daily Journal* (September 1, 2004)**

Men falsely cited in default judgments could clear names.

A bill that would make it easier for men falsely named in default paternity judgments to clear their names is close to becoming law, officials said Tuesday.

"I think it has an awfully good chance of being signed," said Janice Rocco, chief of staff to Assemblywoman Hannah-Beth Jackson, the Santa Barbara Democrat who co-wrote AB252.

Rocco said the Child Support Directors Association of California, which represents the agencies that oversee paternity claims, helped write the legislation.

The bill would give a two-year amnesty to men who claim they have been named falsely in default paternity judgments to get the order set aside. The measure also would give men two years to challenge a default paternity judgment, instead of the current six-month appeal window.

Jackson co-wrote the legislation with Republican state Sen. Roy Ashburn of Bakersfield. The bill passed the Assembly on Aug. 24 by a vote of 78-0. The state Senate approved the measure earlier, 36-0.

Gov. Arnold Schwarzenegger has until Sept. 30 to sign the bill into law.