

# Criminal Justice, Insurance on Legislative Agenda

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SACRAMENTO — The California Legislature convened Jan. 3 for its 1989-90 session to begin wrestling with a familiar panoply of issues affecting lawyers — and a few new twists on the intractable issues of sessions past.

Insurance is sure to be a major issue as well as political reform, in the aftermath of the FBI's Capitol sting operation, which surfaced in August.

Consumer and antitrust laws will be featured, Capitol observers predict, as will efforts to increase funding for the state public defender's office, probation departments and gang violence programs. Sen. Bill Lockyer, D-Hayward, will try again to clear up problems in the state's death penalty law.

November's voter approval of Proposition 103 will not likely end the debate on insurance. A spate of legislation is expected to be filed in the seemingly never-ending battle between the insurance industry and trial lawyers over industry regulation versus tort reform. Some proposed legislation is designed to implement Prop 103; other possible bills will be put on the back burner until a final decision from the California Supreme Court on the controversial measure. And the same players who faced off over the initiatives are likely to introduce the same proposals that failed at the polls.

"Insurance is going to be hot," said Gene Erbin, counsel to the Assembly Judiciary subcommittee on the administration of justice and an author of an unsuccessful insurance initiative backed by the California Trial Lawyers Association, Proposition 100. "I don't know what will be involved, perhaps implementation of 103, modification, or — if it's struck down by the court — we'll start all over again."

Legislators are already gearing up for a reprise of the insurance wars, which last session resulted in a legislative impasse leading to the more-than \$60 million battle over initiatives on the November ballot. Insurance committees in both the Senate and the Assembly conducted hearings in December and more sessions are planned this month to review possible legislative proposals.

Patrick Johnston, D-Stockton, the chairman of the Assembly Finance and Insurance Committee, has introduced Assembly Bill 121, which would freeze insurance rates until the California Supreme Court rules on the 20 percent rate rollback included in Prop 103. Last fall, Johnston used campaign funds to buy television time in the Sacramento market advising voters to vote against all five insurance initiatives.

Efforts to regulate and reduce damage awards in personal injury cases, which thus far have been largely unsuccessful, will continue.

"The usual, typical tort reform bills will be introduced," Erbin said.

Various versions of such measures have been introduced repeatedly in the Legislature, often under the rubric of the Personal Injury Compensation Reform Act (PICRA), some provisions of which are similar to Proposition 106, which voters rejected. Across-the-board limits on attorneys' contingency fees generally have met a chilly reception in the Legislature, although more limited tort reform measures have fared better in past years, Erbin said.

Other areas of substantive law that are likely to draw attention include:

- **Trial court funding:**

The possibility of an end-of-year shortfall in the state budget has court administrators concerned about the future of state funding for trial courts. Most lawyers involved in the legislative battles over court funding are adopting a wait-and-see attitude about the program's future, particularly in light of the upcoming unveiling next month of Gov. George Deukmejian's proposed 1989-90 state budget.

Because of the newness of the program, and the large chunk of state money — \$206.5 million just to cover six months of 1989 — budget analysts say trial court



RICH PEDRONCELLI / FOR THE RECORDER

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funding will be a prime target in times of budgetary crisis.

"Every time there is a pinch, somebody says 'here is this huge amount of money [for state funding of trial courts],' "

observed Stephen Birdleough, legis-

lative liaison for the state Judicial Council. "But I think we're over the hurdle. We're not the new boy on the block anymore."

Richard Jacobs, a special assistant in the state attorney general's office, declined to speculate about the program's future. "It's real, real tough," he said. Trial court funding was the last major piece of legislation approved last session, with the conference committee reaching agreement well after the midnight deadline.

- **Workers compensation:**

Proposals to alter the much-criticized system of workers' compensation in California surfaced last legislative session, but employers, labor groups, medical and legal interests involved in the badly backlogged state system never reached agreement on change. The governor put together his own task force, which worked at cross-purposes from a joint legislative committee. Lacking an agreement between the governor and Legislature — which appears no more likely to occur in 1989 than last year — the issue may go to before voters in the form of another initiative campaign.

- **Family law:**

Frustrated by what they see as legislative intransigence on certain family law issues in the key Assembly Judiciary Committee, family law experts say a thaw of sorts has begun to occur, demonstrated

by passage last session of major bills affecting joint custody and mediation services. After repeated defeats, particularly involving bills to assist women who are victims of domestic violence, some measures that were controversial in past years may be re-introduced, say family law specialists in the Legislature.

Susan Wilkinson, a lawyer with the office of Assemblywoman Jackie Speier, D-South San Francisco, said passage of an amended version of a Speier measure requiring separate mediation for couples in which the wife is a victim of domestic violence has given new hope to groups for battered women that they may achieve some of their goals in the Capitol.

"This particular bill was well-received by battered women who felt they could finally get some action up here," Wilkinson said.

Family law experts in the Capitol said other measures which did not pass in years past may resurface in 1989. Those measures include one to require judicial notice of domestic violence in awarding custody and another requiring continued child support past age 18 to pay for a child's education.

With this week's appointment of Rep. Philip Isenberg, D-Sacramento, the Judiciary Committee has a new chairman this year. He replaces Elihu Harris, D-Oakland, who becomes chairman of the

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# Family, Consumer Bills Headed to Capitol

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Public Safety Committee.

## • Child abuse:

Recommendations by the attorney general's Child Victim Witness Judicial Advisory Committee are expected to be introduced in legislation this session, including measures to establish "concurrent jurisdiction" over juveniles involved in dependency and delinquency matters.

"Very often kids who end up in delinquency cases are treated as delinquents when they really [are victims of abuse who] need help from social service agencies," said Jacobs, state Attorney General John Van de Kamp's representative to the committee. Jacobs said Sen. Nicholas Petris, D-Oakland, has agreed to sponsor that and several other bills to implement the committee's recommendations.

## • Rape:

State Senate President pro tem David Roberti's staff is exploring possible legislation to toughen rape laws, particularly in areas of evidentiary requirements affecting rape victims. Donna Brownsey, a lawyer and top Roberti aide, expressed concern about issues involving a woman's "character" in rape cases.

"Why does the woman still have to prove her character in rape cases?" Brownsey said. "While the male behavior is totally unacceptable, his character isn't at issue."

She said many rape cases still go unreported, and when they are reported, they are prosecuted sporadically and only in extreme cases. "Unless there has been some sort of violence or threat with a deadly weapon, prosecutors aren't interested," Brownsey said.

She said Roberti's office is also exploring possible legislation to ban semi-

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— DONNA BROWNSEY,  
AIDE TO SENATE PRESIDENT PRO TEM DAVID ROBERTI

automatic weapons, and an anti-gang package which will include assistance to probation officers with "ridiculous" caseloads, accelerated prosecutions, tougher bail standards and additional resources for tracking gang members.

## • State public defender:

The Judicial Council's Birdlebough said the Legislature is almost certain to take a hard look at the office of the state public defender, which was the subject of a harsh report by the state Commission on California Government Organization and Economy, commonly known as the Little Hoover Commission. It recommended eliminating the office and merging its functions with other projects for providing appellate counsel.

"There will be some sharp looking at that," Birdlebough said.

## • Juror per diem:

Birdlebough also predicted yet another bill to raise juror per diem from its currently low level of \$5, perhaps to around \$25.

## • Consumer issues:

The state attorney general's office, which has an aggressive consumer law section, is proposing several tough con-

sumer measures this session. Jeff Fuller, a legislative advocate for the attorney general, said legislation will focus on such issues as telemarketing fraud and the abuse of telemarketing merchants' credit card accounts; abuses in the "rent-to-own" field, in which consumers pay high interest to rent-to-own such goods as furniture and appliances; and a major proposal to revise the laws governing vocational schools in California, which reportedly are plagued by widespread abuses.

## • Antitrust:

Fuller and Jacobs said the attorney general also would press for legislation to forbid mergers under the state's antitrust Cartwright Act, counteracting the California Supreme Court's recent decision in *State v. Texaco, Inc.*, 88 CDOS 7431, which held that the Texaco-Getty merger did not violate state law.

## • Campaign finance reform/ethics:

In the wake of the ongoing FBI Capitol corruption investigation and growing concern about the enormous cost of political campaigns — numerous proposals are floating around Sacramento to limit campaign spending, reduce legislators' honoraria and even to establish a state special

prosecutor's office to investigate and prosecute political corruption.

Assembly Speaker Willie Brown, D-San Francisco, the self-described "king of honorariums," agreed that there should be some limit on direct contributions to legislators, either a cap on how much the legislator can receive or a limit on the amount from a contributor. Roberti, D-Hollywood, said he thinks outside income of legislative aides also should be scrutinized. Brown has plans to create a new Assembly committee to review ethics matters.

Another frequent criticism of the state Legislature is the overwhelming number of bills introduced each session. Brown said he is willing to consider a cap on the number of bills a legislator can introduce, which would shift the power to generate bills to the legislative committees.

Van de Kamp said recently he is exploring with local district attorneys the special-prosecutor notion — along with a wide variety of possible statutory changes. The DAs often are burdened with political corruption investigations for which their offices are ill-equipped. "From what I've seen this far, a lot better job can be done [on public corruption cases]," the attorney general said. "We have to look at more thoughtful ways of handling these cases."

Common Cause, which has long pressed for tougher laws governing campaign spending and disclosure, recently unveiled a lengthy proposal for consideration by legislators — a proposal which includes a special prosecutor's office as well as a variety of methods to limit the influence of special interest money on the legislative process.