

New Laws for 2021

**The most important
new statutes, rules, and forms
for
California Criminal Law**

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GUIDE TO THIS MATERIAL

Some new statutes fit under two or more different categories but are included them under only one. There are many cross references.

This treatise does not include all new laws, rules, and forms on California criminal law, only those most important for practitioners.

A complete list of new statutes is at California Legislative Information, Publications, “Bills Enacted Report – 2020.” Nearly complete lists of new criminal statutes, with brief explanations, are in the “Senate Committee on Public Safety 2020 Bill Summary,” and the “Assembly Committee on Public Safety 2020 Legislative Summary.” The Judicial Council’s New Rules and Forms are at the California Courts web site, menu item “Forms and Rules.”

This treatise is for information only and is not legal advice.

New statutory text is in this font, sometimes with underlines, *italics*, and **SMALL CAPS. Existing statutory text is in this font. ~~Deleted statutory text is in this font.~~**

Abbreviations:

AB = Assembly Bill

SB = Senate Bill

Stats. = Statutes and Amendments to the Codes (Published annually)

BP = Business and Professions Code

CCP = Code of Civil Procedure

EC = Evidence Code

FC = Family Code

GC = Government Code

HS = Health and Safety Code

LC = Labor Code

PC = Penal Code

VC = Vehicle Code

WI = Welfare and Inst. Code

D, or Def. = Defendant, or the Defense

P = People, or Prosecution

V = the Victim. M = Minor DOJ = California Department of Justice

CDCR = California Department of Corrections and Rehabilitation

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HIGHLIGHTS AND LOWLIGHTS

- Three-tiered PC 290 registration becomes operative, including a new way to petition for relief from registration.
See “Registration as a Convicted Sex Offender.”
- Batson-Wheeler motions for discriminatory jury selection. Procedure for challenging changed. See “Jury.”
- Court initiated misdemeanor diversion not requiring D.A. consent.
See “Diversion”
- 4 laws concerning police use of force, shootings, training, and supervision.
See “Peace Officers.”
- Length of Probation and Parole Both Shortened.
See “Supervision: Probation, Parole, Mandatory Supervision, PRCS”
- 23 Types of Criminal Fees, Fines, and Reimbursements Repealed.
See “Sentences, Fees, Fines, Reimbursements, Penalty Assessments”
- A referendum rejected repeal of cash bail, but the bail laws can still be amended, and pretrial release programs and risk assessment tools are still allowed. See Bail and Pretrial Risk Assessment.

Early Warnings: Laws with Delayed Operative Dates

PC 290.5 petition to end PC 290 registration, operative July 1.

Reminders: Prior Years’ Laws Operative This Year or After

Three tier PC 290 sex offender registration; the Certificate of Rehabilitation [COR] rehab. period for all sex offenders made uniform, five years, and a COR no longer ends PC 290 registration (a 2017 law.)

Grammatical Note: Many bills use, or substitute, “their,” “them,” or “the person., instead of “his or her.”

TABLE OF CONTENTS

GUIDE TO THIS MATERIAL 2

HIGHLIGHTS AND LOWLIGHTS 3

ARRESTS AND DETENTIONS 8

BAIL AND PRETRIAL RISK ASSESSMENT 8

Proposition 25, the referendum on the repeal of cash bail failed, so cash bail remains the basic law. 8

Pretrial risk assessment tools and programs still allowed despite rejection of the repeal of cash bail...... 9

BUSINESS AND PROFESSIONAL LICENSES AND DISCIPLINE 10

ATTORNEYS 11

MCLE on Strategies to Reduce Bias 11

CHILD ABUSE AND NEGLECT 11

Specified sex crimes involving older teens and younger adults no longer reportable. 11

CONTEMPT 12

Punishment for violation of a Family Code court order can now include probation or conditional sentence...... 12

COURTS 14

How to find Covid-19 Emergency Rules...... 14

CRIMINAL PROCEDURE 14

Prohibition of conviction or sentence based on race, ethnicity, or national origin. (The “Racial Justice Act”) 14

<i>Remote court appearances by prisoners expanded to include suppression motions, and, with agreement, prelims and trials.</i>	19
<u>CRIMES</u>	20
<i>False Reports and Harassment</i>	20
<i>Price Gouging during an Epidemic</i>	21
<i>Hypodermic needles and syringes A Misdo is repealed!</i>	22
<i>Invasion of Privacy by First Responders</i>	23
<u>CRIMINAL RECORDS; RELIEF FROM</u>	23
<i>Participants in “Fire Camps. the California Conservation Camp Program or County Incarcerated Hand Crews.</i>	23
<i>Automatic withholding from disclosure of certain arrest and conviction records.”..</i>	24
<i>Certificate of Rehabilitation No Longer Ends PC 290 Registration; Rehab. Period Made 5 Years for All PC 290 Registrants</i>	29
<u>DIVERSION</u>	30
<i>Court initiated diversion</i>	30
<i>The diversion program for developmentally disabled persons is expanded from misdemeanors to include most felonies.</i>	31
<u>ENHANCEMENTS</u>	33
<i>SB 118 (Stats 2020, ch. 29)</i> <i>Adds to PC 1170, subd. (h): Para. 9</i>	33
<u>EVIDENCE</u>	34
<i>Limited immunity from prosecution when testifying on certain crimes</i>	34
<u>FEES</u>	34
<u>FIREARMS</u>	35

<i>Gun Shows and Ammunition Vendors: Inspections</i>	35
<u>FORMS</u>	35
<u>IMMIGRATION AND CRIMINAL LAW</u>	36
<i>Crime victim immigrant’s ability to obtain U-Visas and T-Visas clarified</i>	36
<i>Access to Juvenile Records Expanded for Certification for U-Visas and T-Visa.</i>	37
<u>JAIL</u>	38
<u>JURY</u>	38
<i>Batson/Wheeler-Type Procedures Changed</i>	38
<u>JUVENILE JUSTICE</u>	42
<i>Custodial Interrogation</i>	42
<i>Juvenile Justice Realignment: Office of Youth and Community Restoration</i>	43
<u>MENTAL HEALTH</u>	45
<i>Intellectual Disability and the Death Penalty</i>	45
<u>PEACE OFFICERS</u>	46
<i>Carotid restraint and choke holds prohibited</i>	46
<i>Officer Involved Shootings</i>	46
<i>Peace Officers: Training and Evaluation</i>	47
<i>Sheriff Oversight by County Board of Supervisors</i>	48
<u>PRISONS AND JAILS</u>	49
<i>Female Jail and Prison Inmates</i>	49
<i>Confidential Phone Calls Between Attorneys and Prisoners</i>	50
<i>The Transgender Respect, Agency, and Dignity Act.</i>	51

<u>PROBATION</u>	54
<u>RE-ENTRY</u>	54
<i>MAT Re-Entry Incentive Program</i>	54
REGISTRATION AS A CONVICTED SEX OFFENDER	55
<i>Exemption from PC 290 regis. for certain crimes against minors</i>	55
<i>3-tiered PC 290 registration becomes operative Jan. 1, 2021</i>	55
<i>Petition to End PC 290 Registration</i>	58
<u>RULES OF COURT AND FORMS</u>	61
<i>Draft forms, not yet approved, on ending PC 290 registration</i>	61
<i>Appointed Counsel for Indigent in Misdemeanor Cases When the Prosecution Appeals</i>	62
<u>SEARCH AND SEIZURE</u>	62
<i>Tracking Device Definition Expanded to Include Software</i>	62
<i>A search warrant can issue for evidence of specified invasion of privacy by first responders</i>	63
SENTENCES, FINES, FEES, REIMBURSEMENTS AND PENALTIES	64
<i>Twenty-Three Categories of Fees and Reimbursements Repealed</i>	64
<u>STATUTES OF LIMITATION</u>	69
<i>Medical misconduct: misuse of sperm, ova, or embryos</i>	69
SUPERVISION: PROB., PAROLE, MANDATORY SUPER. AND PRCS	69
<i>Elderly Parole</i>	69
<i>Length of Probation Shortened</i>	70

ARRESTS AND DETENTIONS

See “Criminal Records, Relief From.



BAIL AND PRETRIAL RISK ASSESSMENT

Proposition 25, the referendum on the repeal of cash bail failed, so cash bail remains the basic law.

A 2019 law (Stats. 2018, Ch. 244; SB 10) would have eliminated cash bail and replaced it with a pretrial assessment program.

A referendum on this bill, Proposition 25 on the November 3, 2020 General Election, failed. So, that bill never took effect, and the bail system was not changed by it.

Can the bail system now ever be changed? Yes.

The California Supreme Court holds that when a statewide referendum fails, “the Legislature will be governed by [the following] rules in fashioning [a new statute on the same subject matter:]”

Legislative bodies cannot nullify [the referendum] power by voting to enact a law identical to a recently rejected referendum measure. (See *Gilbert v. Ashley* (1949) 93 Cal.App.2d 414, 415–416; *In re Stratham*(1920) 45 Cal.App. 436, 439–440. [*Stratham*])

Unless the new measure is “essentially different” from the rejected provision and *is* enacted “not in bad faith, and not with intent to evade the effect of the referendum petition,” it is invalid. ([*Stratham, supra*], at p. 440; see also *Reagan v. City of Sausalito* (1962) 210 Cal.App.2d 618, 629–631; *Martin v. Smith* (1959) 176 Cal.App.2d 115, 118–119.)

(*Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 678 (*Assembly v. Deukmejian*) [Paragraph break added.]

A recent case on local referenda held that “[there must be] a material change in circumstances before county boards of supervisors may reenact the essential feature of an ordinance repealed after submission of a protest petition.” (*County of Kern v. Alta Sierra Holistic Exchange Service* (2020) 46 Cal.App.5th 82, 100.)

Pretrial risk assessment tools and programs still allowed despite rejection of the repeal of cash bail.

AB 3364 [§ 42] (Stats. 2020, Ch. 36)

Amends PC 1320.35

According to the California Courts website FAQs on the now-rejected SB 10 (repeal of cash bail), in “At least 49 counties use a type of pretrial risk assessment tool that provides judges with information about the risk of releasing a defendant before trial.” <https://www.courts.ca.gov/pretrial.htm> (Accessed on Jan. 1, 2021.)

The rejection of the repeal of cash bail did not require any changes to these county practices.

PC 1320.35, added by Stats. 2019, Ch. 589 (SB 36), required validation of these tools. The new law this year extended the dates for this.

From the original "Legislative Counsel's Digest" updated by the new dates.

Existing law, ... stayed pending ... [a Referendum in Nov. 2020], requires Pre-trial Assessment Services, as defined, to assess a person arrested or detained, as specified, according to a risk assessment instrument, as defined.... Pretrial Assessment Services [must release ... specified individuals based on that ... assessment, and, if the person is not released, to submit that assessment to the court for ... its pretrial release ... decision.

This bill ... require[s] each pretrial services agency [using] a pretrial risk assessment tool to validate [it] by ~~Jan-]~~ **July 1, 2021**, [to revalidate it at least] every 3 years, and to make specified information [about it] publicly available.

The bill ... require[s] the Judicial Council to maintain a list of pretrial services agencies that have satisfied those validation [and transparency] requirements.

The bill ... require[s] the Judicial Council, beginning on ~~December 31, 2020~~, **June 30, 2021** [and annually] thereafter, to publish a report on its ... website with data related to outcomes and potential biases in pretrial release....

The bill ... also require[s] the Judicial Council, on or before ~~July 1, 2022~~, **January 1, 2023**, to provide a report to the courts and the Legislature [with] recommendations to mitigate bias and disparate effect in pretrial decision-making.



BUSINESS AND PROFESSIONAL LICENSES AND DISCIPLINE

See Criminal Records, Relief From



ATTORNEYS

MCLE on Strategies to Reduce Bias

AB 3364 (Stats. 2020, Ch. 36) Amends BP 6070.5

This law was originally enacted effective Jan. 1, 2020, with a compliance date for attorneys of Jan. 31, 2023. This bill moves that sooner, to Jan. 31, 2022.

(a) The State Bar shall adopt regulations to require, as of Jan[.] 1, 2022, that the ... (MCLE) curriculum ... includes training on *implicit bias and the promotion of bias-reducing strategies* to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, *socioeconomic status, or other characteristics undermine confidence in the legal system.*

[This required] for each MCLE compliance period ending after January 31, 2023 2022.

At this writing, California State Bar Rule 2.72(B)((2)((a)(ii)(1) contains this requirement but still states this is “Beginning with the compliance period ending January 31, 2023.

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CHILD ABUSE AND NEGLECT

Specified sex crimes involving older teens and younger adults no longer reportable.

AB 1145 (Stats. 2202, Ch. 180). Amends PC 11165.1, subd. (a).

From the Legislative Counsel's Digest:

The Child Abuse and Neglect Reporting Act requires a mandated reporter, ..., to ... report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

[Before this bill] "child abuse or neglect" for [this law] included ... among other things, the crimes of sodomy, oral copulation, and sexual penetration.

This bill ... provide[s] that "sexual assault" for [this law] does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is [age] 21 ... or older and a minor who is under [age] 16....



CONTEMPT

Punishment for violation of a Family Code court order can now include probation or conditional sentence.

AB 2338 (Stats. 2020 Ch. 283)

Amends CCP 1218

From the Legislative Counsel's Digest

Existing law requires a court to order a \$1000 fine or a term of imprisonment not to exceed five days for a person adjudged in contempt of court. Existing law specifies different terms of imprisonment and community service that a

COURTS

How to find Covid-19 Emergency Rules.

The California Courts website has a summary chart that is updated every two weeks. <https://www.courts.ca.gov/court-status.htm>

Each appellate court and each superior court is included.

Categories are: “Entrance Health Screenings,” “Face Coverings,” “Clerk Hours,” “Self Help Centers,” “Filing/Document Drop Box,” “E-Filing,” “Jury Trials,” “Remote Proceedings,” and “Court COVID-19 Web Info.”

The category, “Court Covid-19 Web Info” links to each court’s main information or web page with information.

The California Courts maintains a “COVID-19 NEW CENTER at <https://newsroom.courts.ca.gov/covid-19-news-center> .

Always check your court’s web site for updated and additional information.



CRIMINAL PROCEDURE

Prohibition of conviction or sentence based on race, ethnicity, or national origin. (The “Racial Justice Act”)

AB 2542 [§3.5] (States 2020, ch. 317)
1473 and 1473.7

Adds PC 745, amends PC

PC 745

(a) The state shall not seek or obtain a ... conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin [R., E., or N.O.]. A violation is established if [D] proves, by a preponderance ..., any of the following:

(1) The judge, an attorney in the case, a law enforcement officer ... in the case, an expert witness, or juror exhibited bias or animus towards [D] because of [D's] [R., E., or N.O.].

(2) During [D's] trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about [D's] [R., E., or N.O.], or otherwise exhibited bias or animus towards [D] because of [D's] [, whether or not purposeful. This paragraph does not apply if the person ... is describing language used by another ... relevant to the case or if the person ... is giving a racially neutral and unbiased physical description of the suspect.

(3) [D] was charged or convicted of a more serious offense than [Ds] of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that [P] more frequently sought or obtained convictions for more serious offenses against people who share [D's] [R., E., or N.O.] in the county....

(4)(A) A longer or more severe sentence was imposed on [D] than was imposed on ... similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share [D's] [R., E., or N.O.] than on [Ds] of other races, ethnicities, or national origins in the county....

(B) A longer or more severe sentence was imposed on [D] than was imposed on ... similarly situated individuals convicted of the

same offense, and longer or more severe sentences were more frequently imposed for the same offense on [Ds] in cases with victims of one [R., E., or N.O.] than in cases with victims of other races, ethnicities, or national origins, in the county....

(b) [D] may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under [PC]1473.7 in a court of competent jurisdiction, alleging a violation ...

(c) If a motion is filed ... and [D] makes a prima facie showing of a violation ..., the trial court shall hold a hearing.

(1) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and ... witnesses. The court may also appoint an independent expert.

(2) [D] shall have the burden of proving a violation ... by a preponderance of the evidence.

(3) [T]he court shall make findings on the record.

(d) A [D] may file a motion requesting disclosure to [D] of all evidence relevant to a potential violation ... in the possession or control of the state. A motion ... shall describe the type of records or information [sought]. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and if the records are not privileged, the court may permit [P] to redact information prior to disclosure.

(e) Notwithstanding any other law, except for an initiative approved by the voters, if the court finds, by a preponderance ..., a violation ..., the court shall impose a remedy ... from the following list:

(1) Before a judgment has been entered ... any of the following ...:

(A) Declare a mistrial, if requested the by defendant.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(2)(A) When a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subd[.] (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings.... If the court finds that the only violation of subd[.] (a) ... is based on [subd. (a)(3)] and the court [can] rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy.... On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) When a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subd[.] (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) When the court finds there has been a violation ..., the defendant shall not be eligible for the death penalty.

(4) The remedies ... [here] do not foreclose any other remedies ... under the [U.S. or Calif.] Constitution ... or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) [T]he following definitions apply:

(1) “More frequently sought or obtained” or “more frequently imposed” means that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated, and [P] cannot establish race-neutral reasons for the disparity.

(2) “Prima facie showing” means that [D] produces facts that, if true, establish that there is a substantial likelihood that a violation ... occurred. [A] “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

(3) “Racially discriminatory language” means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references [D’s] physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where [D] is of a specific {R., E., or N.O.} is relevant to determining whether language is discriminatory.

(4) “State” includes the Attorney General, a district attorney, or a city prosecutor.

(i) A [D] may share a [R., E., or N.O.] with more than one group. A [D] may aggregate data among groups to demonstrate a violation....

(j) This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021.



Remote court appearances by prisoners expanded to include suppression motions, and, with agreement, prelims and trials.

SB 118 [§ 13] (Stats. 2020, Ch. 29)

Amends PC 977.2

From the Legislative Counsel's Digest

[The law before this bill] authorize[d] [CDCR] to arrange for court appearances ..., except for preliminary hearings, trials, judgments and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.... [Before this bill, CDCR had to] arrange for that communication ... and, in lieu of the physical presence of the defendant's counsel at the institution with the defendant, require[d] the court and [CDCR] to establish a confidential telephone and facsimile transmission line between the court and the institution for communication between [D's] counsel in court and [D] at the institution.

This bill ... instead limit[s] the above-specified exception to preliminary hearings and trials [and thus permits this for suppression hearings, judgments, and sentencings], and, if the defendant agrees, would authorize preliminary hearings and trials to be held [that way also]. The bill ... delete[s] [CDCR's] obligation to establish [a] facsimile transmission line [thus requiring only a telephone line]....

PC 977.2

(a) [CDCR] may arrange for all court appearances ... except for the preliminary hearing and trial, judgment and sentencing, and motions to suppress to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If [D] agrees the prelim[.] and

trial may be held by two- [video] communications. [The court can still order D to be present in court.] [CDCR] shall arrange for two-way electronic audiovisual communication between the ... court and any state prison facility....

(b) [T]he attorney shall be present with [D] at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if ... [D] does not plead guilty or nolo contendere to any charge [in an information or indictment], the attorney shall be present with [D] or ... shall be present in court during the hearing.

(c) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone line ~~and facsimile line~~ between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. [D’s Atty can choose to be present with D at the prison.]

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CRIMES

False Reports and Harassment

AB 1775 (Stats. 2020 Ch. 327) Adds to PC 653y new Subds. (b), (c), and (e)(2)

[N.B. by GB: As of December 31, 2020, this new law is not shown in Westlaw Classic.]

PC 653y:

(a)

(b) Knowingly allowing the use of or using the 911 ... system for ... harassing another is a crime ...:

(1) For a first violation, as an infraction [with] a [\$250] fine or as a misdemeanor [with] up to six months ... jail, a fine of up to [\$1,000, or both

(2) For a second or subsequent violation, as a misdemeanor [with] up to six months ... jail, a fine of up to [\$1,000], or both

(c) [Knowingly] allows the use of or uses the 911 ... system for ... harassing another person [as] described in [PC] 422.55 or 422.85, ... is ... a misdemeanor punishable by up to one year in ...jail, a fine of [between \$500 to \$2,000] or both [jail] ... and fine.

(d) [”Emergency” defined].

(e)(1)[An exception for routine maintenance]

(2) This [\$] does not apply to [911 calls] by a person with an intellectual ... or other mental disability that makes it difficult or impossible for the person to understand the potential consequences of their actions.



Price Gouging during an Epidemic

SB 1196 (Stats. 2020, ch. 339)

Amends PC 396.

From the Legislative Counsel’s Digest:

[Before this, on] proclamation of [an] ...emergency ... by the President ... or the Governor, or ... of a local emergency ... by the executive officer of any county [or city], for 30 days [and extended for 30-day periods] ..., it is a misd[

for a person, [or business, etc.] to sell ... certain goods or services for ... 10% greater [that] ... charged ... [before]

[A] greater ... increase [is okay] ... [that is] attributable to additional costs imposed ... by the [good's] supplier ..., or ... [added] costs for the labor or materials used [for] services ..., and the price is no more than 10% greater than the [seller's] cost ... plus the [seller's customary] markup....

["Emergency" now includes pandemic and epidemic.]

This bill ... expand[s] PC 396]] to also include selling ... [covered] goods or services for ... 10% greater than the price charged ... prior to a date set by [a] ... declaration of emergency.

[It is now] a crime for a person [or business, etc.] who did not charge ... for ... goods or services ... prior to the ... declaration ... to charge ... [over] 50% greater than the seller's ... costs....

[The] Governor or the Legislature [can now] extend ... these prohibitions for [more] than 30 days, and ... authorize specified price increases [over] the otherwise permissible amount....



Hypodermic needles and syringes A Misdo is repealed!

AB 2077 (Stats 2020, ch. 274) Repealed: BP 4326

Repealed: BP 4326 which had read:

~~(a) Any person who obtains a hypodermic needle or ... syringe by ... fraud ... or by a forged or fictitious name, or ... in violation of ... this chapter, is guilty of a misdemeanor.~~

~~(b) Any person who has obtained a hypodermic needle or ... syringe from [a permitted person] and who uses [it] for any purpose other than that for which it was obtained is guilty of a misdemeanor ...~~

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Invasion of Privacy by First Responders

AB 2655 (Stats. 2020, Ch. 219) Adds PC 647.9; Amends PC 1524

This bill was enacted, according to the Assembly Committee on Public Safety’s report for May 19, 2020, because some first responders distributed photos of a deceased celebrity killed in an accident.

PC 647.9, subdivision (a):

(a) A first responder [as defined], operating under color of authority, who responds to the scene of an accident or crime and captures the photographic image of a deceased person ..., for any purpose other than an official law enforcement purpose or a genuine public interest is guilty of a misdemeanor punishable by a fine [up to] ... \$1,000 ... per violation.

Search warrants can issue for evidence of violations. See “Search and Seizure.”

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CRIMINAL RECORDS; RELIEF FROM

Participants in “Fire Camps. the California Conservation Camp Program or County Incarcerated Hand Crews.

AB 2147 (Stats 2020, Ch. 60) Adds PC 1203.4b

From the Legislative Counsel's Digest:

This bill ... allow[s] a [D] who successfully participated in the California Conservation Camp Program or a county incarcerated individual hand crew as an incarcerated individual hand crew member, and has been released from custody, to petition to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty.

The bill ... make[s] persons convicted of specified violent felonies and sex offenses ineligible for relief.

The bill ... allow[s] the court ... to dismiss the accusations or information ... at the court's discretion and in the interest of justice and would release [D] from all penalties and disabilities resulting from the offense, except as provided.

In granting this relief, the bill ... require[s] the court to order the early termination of probation, parole, or supervised release if the court determines that [D] has not violated any of the terms or conditions of their release during the pendency of the petition.

Automatic withholding from disclosure of certain arrest and conviction records.”

SB 119 (Stats. 2020, Ch. 29) Amends PC 851.93, 1203.425, and others.

This was a new law last year, but the operative date was not met because of delays caused by the Covid-19 shutdowns.

The law has been re-enacted with new operative dates, along with some minor changes.

Here is last year's entry: AB 1076 (Stats. 2019, Ch. 578.)

Adds: PC 851.93 and 1203.425; amends VC 13555, LC. 432.7, BP 480, and others.

Effective Jan. 1, 2021, but operative dates now delayed to July 2022 and August 2022, and then only if funds are appropriated (subd. (g) of PC 851.93, and of 1203.425.)

From the *Original* Legislative Counsel's Digest:

This bill ..., commencing Jan[.] 1, 2021, and subject to an appropriation ..., require[s] DOJ, ... monthly ..., to review the records in the statewide criminal justice databases and to identify persons who are eligible for ... having their arrest ..., or ... conviction records, withheld from disclosure, as specified.

The bill ... require[s] [DOJ] to grant relief ..., without requiring a petition....

.... [DOJ must], ... monthly ... [notify] the superior court ... of all cases [granted] relief.... The bill ... prohibit[s] the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

The bill ... authorize[s] [P] or probation ..., no later than 90 ... days before ... eligibility ..., to file a petition [prohibiting DOJ] from granting [this] relief.... [But D] would [still] be eligible ... through other existing procedures....

851.93 [Arrests] [Underlines and Capitalization added]

(a)(1) [Monthly, DOJ] shall review ... the statewide criminal justice databases, and ... identify [eligible] persons....

(2) D is eligible if the arrest was on or after Jan. 1, 2021¹ and any of the following: [(A) & (B) It was for a misdemeanor. and the

¹ This date is unchanged from the original new law.

charge was dismissed; *or* [criminal proceedings were not started, and a year passed; *or* [D] was acquitted...; *or* **(C)** It was for an PC 1170, subd. (h) crime, criminal proceedings were not started, and 3 years have passed, *or* [D] was acquitted.... *or* **(D)** The person completed ... a diversion program.]

(b) (1) [DOJ] shall grant relief ... without requiring a ... motion ... if the ... information is ... in [DOJ's] electronic records. **(2)** [State] summary criminal history info[.] [and all statewide criminal databases with the record] [must include the relief granted]. **(3)** Except as ... in subd[.] (d), [the] arrest ... is deemed not to have occurred, [the] person ... is released from any penalties and disabilities... and may [so-answer] any question

(c) [Monthly, DOJ shall inform the superior court of all cases for which a complaint was filed and for which this relief was granted. Starting ~~Feb. 1, 2021~~, **August 1, 2022**. except [as in] subd. (d), **THE COURT SHALL NOT DISCLOSE INFORMATION [ABOUT THAT] ARREST ... TO ANY PERSON OR ENTITY ... EXCEPT TO [D] OR A CRIMINAL JUSTICE AGENCY....**

(d) [Despite this relief: **(1)** The person must disclose an arrest in response to a question in any application to be a peace officer. **(2)** A criminal justice agency can access and use them. **(3)** P can prosecute the case, within the statute of limitations. **(4)** Relief ... does not let D own, etc., a gun. **(5)** Relief does not let D hold public office. **(6)** Listed HS and other §§ can still be used to access and act based on criminal history.]

(e) [M]otions, or orders for ... relief ... [are still] authorized by [listed PC §§]. **(f)**....

(g) This section shall be operative commencing **July 1, 2022**, subject to an appropriation in the annual Budget Act.

1203.425. [Convictions] [Underlines and capitals added.]

(a)(1) **(A)** Commencing **July 1, 2022**, and subject to an appropriation in the annual Budget Act, [each month], [DOJ] shall review the ... statewide criminal justice databases, [and] the Supervised Release File, [and] ... identify persons ... [meeting] the criteria [in (a)(2)] ... for automatic conviction record relief.

(B) [Ds are] eligible for ... relief ... if they meet ... the following ...:

(i) [D] is not required to register [under PC 290 et seq.]

(ii) [D] [is not on] local, state, or federal supervision....

(iii) [D isn't] serving a sentence ... and [has no pending charges.

(iv.) Except as ... provided in [(v)(III)] [Sic: there is no (v)(III)], the conviction [did not] result[] in [prison]....

(v.) The conviction [was] on or after January 1, 2021, and...:

(I) [D] [got] probation and ... completed ... without revocation.

[or] **(II)** [D] was convicted of an infraction or misd[.], [wasn't] granted probation, ... completed [it], and [a] year has elapsed....

(2)(A) Except as ... in subd[.] (h), [DOJ] shall grant ... dismissal of a conviction, to a [D in subd. (a)], without requiring a ... motion ... if the ... information is ... in [DOJ's] electronic records.

(B) The state summary criminal history information [and all statewide criminal databases with that record] shall ... [note that this relief was granted].

(C) Except as ... provided in subd[.] (d) and in [VC] 13555 ..., a person granted ... relief ... shall be released from all penalties and disabilities resulting from the offense....

(3) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, DOJ] shall ... [inform] the superior court ... of all cases for which a complaint was filed ... for which relief was granted Commencing on August 1, 2022, for any record retained by the court ..., except as provided in subd[.] (d), THE COURT SHALL NOT DISCLOSE INFORMATION CONCERNING A CONVICTION GRANTED RELIEF PURSUANT TO THIS SECTION OR SECTION 1203.4, 1203.4A, 1203.41. OR 1203.42, TO ANY PERSON OR ENTITY, IN ANY FORMAT, EXCEPT TO [D] OR A CRIMINAL JUSTICE AGENCY....

(4) Relief ... is subject to the following conditions:

[(A) & (B) [D must disclose this ... in an application to be a peace officer ... for public office, or to contract with the Lottery.] (C) [A criminal justice agency can access and use this.] (D) ... [T]he [court still has] jurisdiction ... over ... motion[s] to ... [provide] postconviction relief or permit a collateral attack.... (E) Relief ... does not affect ... authorization to own, [etc.] any firearm, ...

(F) ... [P]rohibition[s] from holding public office [still apply].

(G) [Several listed HS §§ still provide authority to take adverse action.... (H) Relief does not make [D] eligible to provide in-home supportive services.] (I) In any subsequent prosecution of [D], the ... conviction may be pleaded and proved.]

(5) [Motions and orders for relief]... [are still] authorized by any ... law, including, [inter alia], [PC] 1203.4 and 1204.4a....

(b)[(1) [P or probation may, up to 90 days before D's eligibility, file a petition to prohibit relief. (2) & (3) The court shall hold a hearing within 45 days, which can be upon declarations, police

reports, criminal history, or other reliable evidence. (4) P or probation must show that granting relief poses a substantial public safety threat.] (5) If that burden is met, D must show that the hardship of no relief outweighs the ... safety threat. (6) & (7) If the court denies automatic relief, D can still be eligible for relief pursuant to [PC] 1203.4 or 1203.4a....]

(c [The sentencing court] shall advise [D] [of] this section and of [any] right, ...to petition for a cert[.] of rehab[.] and pardon.

For another aspect of SB 118 see “Enhancements.”



Certificate of Rehabilitation No Longer Ends PC 290 Registration; Rehab. Period Made 5 Years for All PC 290 Registrants.

SB 384 (Stats. 2017, Ch. 541) Amends, inter alia, PC 4852.03

This is part of the “3-tiered PC 290 sex offender registration law. See “Registration as a Convicted Sex Offender.”

Effective July 1, 2021, PC 4852.03, subdivisions (a)(2) will read as follows:

[To rehabilitation period consists of five-year residence in California, and:]

(2)(A) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Sections 290 to 290.024, inclusive.

(B) A certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under Section 290.5.



DIVERSION

Court initiated diversion

AB 3234 (Stats. 2020, Ch. 334).

Adds PC 1000.95 to 100.97:

PC 1000.95

(a) A ... judge may, at the judge's discretion, and over [P's] objection..., offer diversion to a [misdemeanor] [D]....

(b) [Diversion can last up to] 24 months and [can include] terms, conditions, or programs ... based on [D's] specific situation.

(c) If [D] has complied..., at the end ..., the judge shall dismiss the [case].

(d) If ... [D] is not complying ..., the court may [hold a hearing,] end the diversion and [resume] the criminal proceedings.

(e) [Not eligible:] (1) Any [PC 290] offense..., (2) ... [PC] 273.5, (3)...[PC 243, subd. (e)], (4)...[PC] 646.9.

PC 1000.96

A [diverted D] ... [must] complete all of the following ... to have their action dismissed:

(a) Complete all conditions ordered by the court.

(b) Make full restitution. However, a [D's] inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that [D] has failed to comply with the terms of diversion.

(c) Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

PC 1000.97

(a) Upon successful completion of [diversion] ..., the arrest ... shall be deemed to have never occurred. [D] may indicate in response to any question concerning their prior criminal record that they were not arrested. A record pertaining to an arrest resulting in successful completion

of [diversion] shall not, without [D's] consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) [D] shall be advised that, regardless of their successful completion of diversion, the arrest ... may be disclosed by the Department of Justice in response to a peace officer application request and that ... this section does not relieve them of the obligation to disclose the arrest in response to a direct question ... in a questionnaire or application for a position as a peace officer, as defined in Section 830.

Comments by GB:

- This does not require any admissions or a guilty plea. Can the Court require those anyway? Should D agree to those? N.B. dangers with admissions, esp. for Immigration.
- Can the Court order supervision by the probation department?
- Terms, etc., are not required to be in writing. Get that, or an immediate transcript, anyway.
- Consider all alternatives, incl. civil compromise, other diversion programs, etc.
- Prefer short lengths over long ones.

For another aspect of AB 3234, see "Parole and Re-entry."



The diversion program for developmentally disabled persons is expanded from misdemeanors to include most felonies.

AB 79 [§ 15] (Stats. 2020, Ch. 11) Amends PC 1001.20, 1001.21, 1001.22, 1001.23, and 1001.29

From the Legislative Counsel's Digest.

Existing law establishes a process for diversion of a defendant in a criminal proceeding for an offense that is charged as, or reduced to, a misdemeanor, if the defendant has been evaluated by a regional center to have a cognitive developmental disability, as defined, the court determines from reports from the regional center, the prosecutor, and the probation department that diversion is acceptable, and the defendant consents to diversion....

This bill, commencing January 1, 2021, would revise those provisions to refer instead to "developmental disability," which would mean a disability as defined in the Lanterman Developmental Disabilities Services Act and for which a regional center finds eligibility for services under the act, and would expand the offenses to which the diversion program would apply to include any misdemeanor or felony offense, with specified exceptions....

From PC 1001.21, as amended.

(b) This chapter applies to any offense that is charged as ~~or reduced to a misdemeanor or felony offense, except that a defendant may not be placed into a diversion program, pursuant to this section, for any of the following current charged offenses:~~

- (1) Murder or voluntary manslaughter.**
- (2) [A PC 290-registerable offense, except PC 314].**
- (3) Rape.**
- (4) [& (7)] [Felony child molestation, and continuous molestation]**
- (5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of [PC] 220.**
- (6) Commission of rape or sexual penetration in concert with another person in violation of [PC] 264.1.**
- (7) [see (4) above]**

(8) A violation of subdivision (b) or (c) of Section 11418 [used of weapons of mass destruction].



ENHANCEMENTS.

SB 118 (Stats 2020, ch. 29) Adds to PC 1170, subd. (h): Para. 9

PC 1170, subd. (h)(9): ... [A]ny enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement.

... [T]his ... abrogate[s] the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

[Query if this applies to enhancements that make an offense into a serious or violent felony. See PC 1170, subd. (h)(3). Query also the extent to which this applies to PC 290-registerable offenses.]

For another aspect of SB 118, see “Criminal Records, Relief From”



FIREARMS

Gun Shows and Ammunition Vendors: Inspections

AB 2016. (Stats 2020 Ch 273.)

Adds a Subd. (d) to each of PC 27310 and 30345

Adds PC 27310, subd. (b):

[Starting] July 1, 2022, [DOJ] may inspect any firearm dealers, ammunition vendors, or manufacturers participating in a gun show or event ...to ensure compliance with [applicable state and federal laws]....

Adds PC 30345, subd. (b):

[Starting] July 1, 2022, [DOJ] may inspect ammunition vendors to ensure compliance with [conditions, requirements, and prohibitions in [PC statutes re: Ammunition Vendors] and any other applicable state or federal firearms laws....



FORMS

See “Rules of Court and Forms.”



IMMIGRATION AND CRIMINAL LAW

Crime victim immigrant's ability to obtain U-Visas and T-Visas clarified

AB 2426 (Stats. 2020, Ch. 187)
679.11

Amends PC 679.10 and

From the Legislative Counsel's Digest

[F]ederal law provides a petition form to request temporary immigration benefits for a person who is a victim of certain qualifying criminal activity. [This is the U-Visa program] Existing federal law also provides a supplemental form for certifying that a person submitting a petition for immigration benefits is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity.

Existing federal law provides a separate petition form to request temporary immigration benefits for a person who is a victim of human trafficking. [This is the T-Visa program] Existing federal law provides a supplemental form for certifying that a person submitting this latter petition is a victim of human trafficking and a declaration as to the person's cooperation regarding an investigation or prosecution of human trafficking.

Existing state law requires, upon request by specified persons, that a certifying official from a certifying entity, as defined, certify "victim helpfulness" or "victim cooperation" on those supplemental forms, respectively, when the requester was a victim of a qualifying criminal activity (for a U-Visa) or human trafficking (for a T-Visa), and has, is, or is likely to be helpful or cooperative regarding the investigation or prosecution of that qualifying criminal activity, as specified. Existing law requires the certifying entity to process those sup-

plemental forms within 30 days of the request, unless the noncitizen is in removal proceedings, in which case the certification is required to be processed within 7 days of the request.

This bill ... clarif[ies] that a certifying entity includes the police department of the University of California, a California State University campus, or a school district.

This bill ... also clarif[ies] that a certifying entity shall not refuse to certify on the described forms that the victim has been helpful, solely because the criminal case involved has already been prosecuted or otherwise closed, or because the time to commence criminal action has expired.

[PC 679.10 concerns U-Visas. PC 679.11 concerns T-Visas.]

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Access to Juvenile Records Expanded for Certification for U-Visas and T-Visa.

AB 2321 (Stats 2020, Ch. 329)

Amends WI 781 and 786.

For a description of the U-Visa and T-Visa programs, see the discussion of AB 24256, above.

This bill ... authorize[s] a judge or prosecutor to access specified sealed records under these provisions for the limited purpose of processing the request of a victim or victim's family member to certify victim helpfulness on specified United States Department of Homeland Security forms [for U-Visas and T-Visas].

See also Juvenile Justice



JAIL

See “Prisons and Jails



JURY

Batson/Wheeler-Type Procedures Changed

AB 3070 (Stats. 2020, Ch. 318)

Rewrites CCP 231.7

This applies to criminal trials beginning Jan. 1, 2022; and to civil trials beginning Jan. 1, 2026.

(a) A party shall not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror’s race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups.

(b) A party, or the trial court on its own motion, may object to the improper use of a peremptory challenge....

(c) [U]pon objection to ... a peremptory ..., the party exercising the peremptory ... shall state the reasons the peremptory [Comment by GB: it appears to me that court no longer must first find a prima facie discrimination case before requiring reasons for the challenge].

(d)(1) The court shall evaluate the reasons given to justify the peremptory ... in light of the totality of the circumstances.

The court shall consider only the reasons actually given and shall not speculate on, or assume the existence of, other possible justifications....

If the court determines there is a substantial likelihood that an objectively reasonable person would view race [etc.] or perceived membership in any

of those groups, as a factor in the use of the peremptory ..., then the objection shall be sustained.

(d)(1) The court need not find purposeful discrimination to sustain the objection....

A motion brought under this section shall also be deemed a sufficient presentation of claims asserting the discriminatory exclusion of jurors in violation of the United States and California Constitutions.

(2)(A)[A]n objectively reasonable person is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors

(B) “[S]ubstantial likelihood” means more than a mere possibility but less than a standard of more likely than not.

(C) “[U]nconscious bias” includes implicit and institutional biases....

(e) A peremptory ... for any of the following reasons is presumed ... invalid unless the party exercising [it] ... show[s] by clear and convincing evidence that an objectively reasonable person would view the rationale as unrelated to a prospective juror’s race, [etc.] and that the reasons ... bear on the prospective juror’s ability to be fair and impartial...:

(1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.

(2) Expressing a belief that ... officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.

(3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.

(4) A prospective juror’s neighborhood.

(5) Having a child outside of marriage.

(6) Receiving state benefits.

(7) Not being a native English speaker.

(8) The ability to speak another language.

(9) Dress, attire, or personal appearance.

(10)[to] (13)....

[Comment by GB: Many of these provisions abrogate, or impact, cases that upheld [peremptories for these reasons. See Senate Committee on Public Safety report on AB 3070 for August 7, 2020.]

(f) [T]he term “clear and convincing” refers to the degree of certainty the factfinder must have in determining whether the reasons given for the exercise of a peremptory challenge are unrelated to the prospective juror’s cognizable group membership, bearing in mind conscious and unconscious bias.

To determine that a presumption of invalidity has been overcome, the factfinder shall determine that it is highly probable that the reasons given for the exercise of a peremptory challenge are unrelated to conscious or unconscious bias and are instead specific to the juror and bear on that juror’s ability to be fair and impartial in the case.

(g)(1) The following reasons for peremptor[ies] have historically been associated with improper discrimination in jury selection:

(A) The prospective juror was inattentive, or staring or failing to make eye contact.

(B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.

(C) The prospective juror provided unintelligent or confused answers.

(2) The reasons ... [above] are presumptively invalid unless the ... court ... confirm[s] that the ... behavior occurred, based on the court’s own observations or [those] of counsel for the objecting party. Even [then], the counsel offering the reason shall explain why [that] demeanor, behavior, or manner ... matters to the case

(h) Upon a court granting an objection to the improper exercise of a peremptory challenge, the court shall do one or more of the following:

(1) Quash the jury venire and start jury selection anew. This remedy shall be provided if requested by the objecting party.

(2) If the motion is granted after the jury has been impaneled, declare a mistrial and select a new jury if requested by the defendant.

(3) Seat the challenged juror.

(4) Provide the objecting party additional challenges.

(5) Provide another remedy as the court deems appropriate.

(i) This section applies in all jury trials in which jury selection begins on or after JANUARY 1, 2022.

(j) The denial of an objection ... shall be reviewed by the appellate court de novo, with the trial court's express factual findings reviewed for substantial evidence.

The appellate court shall not impute to the trial court any findings, including ... of a prospective juror's demeanor, that the trial court did not expressly state....

The reviewing court shall consider only reasons actually given [by the party] and shall not speculate as to or consider reasons that were not given to explain either the party's use of the peremptory ... or [to explain] the party's failure to challenge similarly situated jurors who are not members of the same ... group as the challenged juror....

[If] the objection was erroneously denied, that ... [is] deemed prejudicial, the judgment shall be reversed, and the case remanded for a new trial.

(k) This section shall not apply to civil cases [until January 1, 2026].

(l) [T]his section shall not, in purpose or effect, lower the standard for judging challenges for cause or expand use of challenges for cause.

(m) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application....



JUVENILE JUSTICE

See also Immigration and Criminal Law.

Custodial Interrogation

SB 203 (Stats. 2020, Ch. 335)

Amends WI 625.6

WI 625.6:

(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth ~~45~~ **17** years ... or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

(b) The court shall, in adjudicating the admissibility of statements of a youth ~~45-17~~ years ... or younger made during or after a custodial interrogation, consider the effect of failure to comply with subd[.] (a) and, additionally, shall consider any willful violation of subd[.] (a) in determining the credibility of a law enforcement officer....

(c) This ... does not apply to ... statements of a youth ~~45~~ **17** years ... or younger if ...:

(1) The officer ... reasonably believed the information ... sought was necessary to protect life or property from an imminent threat. [AND]

(2) The ... questions were limited to those ... necessary to obtain that information.

(d) This ... does not require a probation officer to comply ...in the normal performance of the probation officer’s duties under [WI §§] 625, 627.5, or 628.

(e) [A requirement for a panel of experts to review this section’s implementation, effects and outcomes is deleted.

(f) [A sunset date of Jan. 1, 2025 is deleted; no sunset date anymore.]

Uncodified section 1 of this bill is legislative findings and declarations.

[What is the remedy for violation? “[A] court must apply federal constitutional law, rather than more restrictive standards derived from a state statute that was not passed by a two-thirds majority, in deciding the admissibility of a minor’s custodial statements. Section 625.6 does not authorize a court to exercise its discretion to exclude statements if those statements are admissible under federal law.” (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 450)]



Juvenile Justice Realignment: Office of Youth and Community Restoration

SB 823 (Stats. 2020, Ch. 337) Sections affected in some way are in the following list:

GC §§ affected: 12803; 12820 et seq. (Title 2, Div. 3, Art. 1); 12838; 12838.1.

PC §§ affected: 830.5; 2816; 13015

WI §§ affected: 207.1, 207.2; 207.6; 208.5; 209, 210.2; 607; 707.1, 730; 731; 733.1; 1703, 1710, 1711, 1712, 1714, 1731.5, 1752.2, and 1762 736.5; 912 1990 et seq. (Ch. 1.7 of Div. 2.5); 1955.2; 2200 et seq. (Ch. 4 of Div. 2.5); incl. 2201 and 2202; 2250 et seq. (Ch. 5 of Div. 2.5); 2260 et seq. (Ch. 6 of Div. 2.5)

Background:

A new law in 2019 abolished the Division of Juvenile Justice (DJJ), which had been part of CDCR, and replaced it with a new Department of Youth and Community Restorations within the Health and Human Services Agency. Transition began last July 2019 and was to have been complete by July 1, 2020.

When Covid-19 hit last March 2020, the transition was slowed and finally stopped and replaced by this year's new law.

From the Legislative Counsel's Digest for this current new law:

Implementing an intent to close DJJ:

[This] bill ..., [as of] July 1, 2021, prohibit[s] [most] further commitment[s] ... to [DJJ], ... and ... require[s] that all wards committed to [DJJ] prior to that date remain within [DJJ's] custody ... until ... discharged, released, or transferred.

[This] bill ... declare[s] the [Legislature's] intent ... to close [DJJ] through the shifting of this responsibility, as specified. The bill ... commencing July 1, 2021, establish[es] the Office of Youth and Community Restoration in [HHS] to administer these provisions and ... to support this transition.

.... [A new] Juvenile Justice Realignment Block Grant ... provide[s] [for] county-based custody, care, and supervision of youth who are realigned from [DJJ] or who would have otherwise been eligible for ...[DJJ].

[*Before this bill*, juvenile court] jurisdiction..., if M committed a WI 707(b) offense and was committed to DJJ, may continue until “M” [is age] 25 ..., if M committed specified offenses.

Now, commitment to DJJ is no longer required for extended jurisdiction for 707(b) offenses, and reduces the max age of jurisdiction to 23, *unless* M would, in criminal court, have faced [a] sentence of 7 years or more: then juvenile court jurisdiction ... continue[s] until age 25.

For other offenses, juvenile court jurisdiction can still continue to age 21.

Plus many other changes.



MENTAL HEALTH

Intellectual Disability and the Death Penalty

AB 2512 (Stats. 2020, Ch. 331)

Amends PC 1376.

PC 1376 establishes a procedure by which the D in a death penalty case can require a hearing, with or without a jury, on the issue of intellectual disability. If found intellectually disabled, D cannot get death.

From the Legislative Counsel’s Digest:

This bill ... change[s] the definition of “intellectual disability” to include conditions that manifest before the end of the developmental period....

[It] also prohibit[s] the results of a test measuring intellectual functioning to be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.

(b)(1) A state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. The [AG] is the state prosecutor unless otherwise ... named.

(2) The state prosecutor is authorized to...:

(A) Investigate ... a shooting by a peace officer that results in the death of an unarmed civilian.

(B) For all investigations ... submit a written report [with specified minimum contents].

(C) If criminal charges ... are ... warranted, initiate and prosecute [those].

(3) The state prosecutor shall ... maintain on a public internet website [with] each written report ... by the state prosecutor [under] this subdivision [redacting confidential information].

(c)(1)[Starting] July 1, 2023, the [AG] shall [have] a Police Practices Division ... to, upon request of a local law enforcement agency, review [that agency's] ... deadly force policies....

(2)[This] program ... shall make ... recommendations to any law enforcement agency that requests a review..., based on ... recommended best practices....

//

Peace Officers: Training and Evaluation

AB 846. (Stats 2020 Ch. 322.) Amends GC 1031 adds GC 1031.3 and adds PC 13651.

From the Legislative Counsel's Digest:

[R]equire[s] peace officers be evaluated by a [Dr. or Psych.] for bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation....

[The] [POST] Commission [must] ... update regulations and screening materials to identify explicit and implicit bias against [any on the above list] related to emotional and mental condition evaluations.

[E]very [dep't] or agency that employs peace officers [must] ... make changes [in job descriptions to] deemphasize ... paramilitary aspects ... and place more emphasis on community interaction and collaborative problem solving....



Sheriff Oversight by County Board of Supervisors.

AB 1185. (Stats 2020 Ch. 342.)

Adds GC 25303.7

GC 25303.7

(a)(1) & (2) A county [by the Bd. of Supervisors or a vote of residents] may create a sheriff oversight board, ... of civilians [appointed by the supervisors] to assist ... supervisors with ... [GC] 25303 [duties to supervise] the sheriff.

(b)(1)The [oversight board] chair ... shall issue a subpoena or subpoena duces tecum ... whenever the board deems it necessary or important [for]:

(A) Any person ... upon any subject matter within the [board's] jurisdiction....

(B) Any [county officer ... [re:] ... their ...duties [for] the sheriff's [dep't].

(k) Each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

- (1) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation.**
- (2) Assist the incarcerated pregnant person with access to a phone ... to contact relatives regarding newborn placement.**
- (3) Oversee the placement of the newborn child.**

Subd. (k) of added PC 4023.8, concerning jail is identical.

These new provisions often differ depending on whether this is in prison or local jail.

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Confidential Phone Calls Between Attorneys and Prisoners

AB 3043. (Stats. 2020, Ch. 333.) Adds PC 5058.7

P.C. 5058.7.

(a) [CDCR] shall approve an attorney's request to have a confidential call with the inmate that they represent. The approved confidential call shall be at least 30 minutes once per month, per inmate, per case, unless the inmate or attorney requests less time.

(b) ... "[C]onfidential call" means a telephone call between an inmate and their attorney that both the inmate and attorney intend to be private.

//

The Transgender Respect, Agency, and Dignity Act.

SB 132 (Stats. 2020, Ch. 182

Adds PC 2605 and 2606.

Uncodified section 1 of this bill states the title of this new law. Uncodified section 2 has legislative findings and declarations.

PC 2605

(a) During the initial intake and classification process, and in a private setting, the Department of Corrections and Rehabilitation shall ask each individual ... to specify all of the following:

(1) The individual’s gender identity of female, male, or nonbinary.

(2) Whether the individual identifies as transgender, nonbinary, or intersex.

(3) The individual’s gender pronoun and honorific.

(b) A person incarcerated by the department may not be disciplined for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to this section.

(c) At any time, a person under the jurisdiction of the department may inform designated facility staff of their gender identity, and designated facility staff shall promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use [for] that individual....

(d) Staff, contractors, and volunteers of [CDCR] shall not consistently fail to use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding the individual that involve use of a pronoun and honorific.

(e) [Definitions]:

(1) “Gender pronoun” means a third-person singular personal pronoun, such as “he,” “she,” or “they.”

(2) “Honorific” means a form of respectful address typically combined with an individual’s surname.

PC 2606.

(a) An individual incarcerated by [CDCR] who is transgender, nonbinary, or intersex, regardless of anatomy, shall:

(1) Be addressed in a manner consistent with the ... individual’s gender identity.

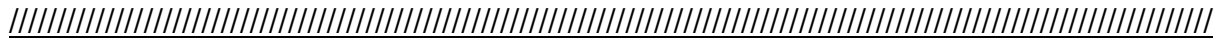
(2) If lawfully searched, be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual’s search preference. If the ... individual’s preference or gender identity cannot be determined, the search shall be conducted according to the gender designation of the facility where they are housed.

(3) Be housed at a correctional facility designated for men or women based on the individual’s preference, including, if eligible, at a residential program for individuals under the jurisdiction of [CDCR]. These programs include, but are not limited to, the Alternative Custody Program, Custody to Community Transitional Reentry Program, Male Community Reentry Program, or Community Prisoner Mother Program.

(4) Have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed ..., including, but not limited to, granting single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat from any location where they may have access to the individual who has

PROBATION

See “Supervision, Probation, Parole, Mandatory Supervision, and PRCS.”



RE-ENTRY

See also “Supervision: Probation, Parole, Mandatory Supervision, and PRCS.”

MAT Re-Entry Incentive Program.

AB 1304 (Stats. 2020, Ch. 325) Adds PC 3000.03

From the Legislative Counsel’s Digest:

[C]ontingent [on an] appropriation [from a] ... federal grant, [this bill will] establish the [above] Program, [making] a [D] released ... on parole, with ... exceptions, who has been enrolled in, or ... completed, an institutional substance abuse program, eligible for a reduction in ... parole if [D] successfully participates in a substance abuse treatment program [with] a multifaceted approach ..., including the use of [U.S. FDA] approved medically assisted treatment (MAT).

[A]uthorize[s] a 30-day reduction for each 6 months of treatment successfully completed that is not ordered by the court, up to a ... 90-day reduction....



See also: Petition to End PC 290 Registration.

See also: Exemption from PC 290 registration for certain crimes against minors

Overview:

SB 384 (Stats. 2017, Ch. 541), as further amended by, § 11 of SB 118, (Stats. 2020, Ch. 29) and SB 145 (Stats 2020, ch. 79) [the preceding slide] establishes 3 tiers of registration based on the offense and other criteria.

It also affected the Megan's law website which publishes certain information about specified sex offenders.

Tier 3 *mostly* cannot end registration. [No tier 3 for WI 602's.] (PC 290, subd. (d)(1)(A); Exception: PC 290.5, subd. (b)(1).)

Tier 2: *mostly* can petition to end registration after 20 yrs. [For 602's: 10 yrs.] (PC 290, subd. (d)(2)(A); Exception (10 yr.): PC 290.5, subd. (b)(1).

Tier 1: can petition to end registration after 10 years. [For 602's: 5 yrs.] (PC 290, subd. (d)(3).

No one's registration is guaranteed to ever end.

Make sure you are using the version of PC 290, including new subd. (c)(2), operative on Jan. 1, 2021

The tiers are in the most recent PC 290, subd. (d).

In deciding which tier your D is in, start with tier 3! Reason: Your D might qualify for more than one tier, and only the highest one counts!

Detailed discussion:

D. is in tier 3 for any of: (A) An already-registered D is convicted of a violent felony (PC 667.5, subd. (c)), for which registration is required under PC

290, subd. (c), or 290.006. (B) D. is a Sexually Violent Predator; (C) D is convicted of any of 16 listed sex offenses. (D) D’s risk level on the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) is “well above average risk” as defined. (E) D. is a habitual sex offender under PC 667.71. (F) D. was convicted of PC 288, subd. (a), in 2 cases; (G) D. got “15 to 25 years to life” under PC 667.61. (H) D. was found not guilty by reason of insanity of a PC 290 crime; (I) Conviction was for certain human trafficking sex crimes; (J) to (R) D. was convicted of any of an additional group of listed sex offenses. (PC 290, subd. (d)(3), operative 1-1-21.)

If D is not in tier 3, D. is in tier 2 if D. was convicted of a PC 290, subd. (c) crime that is also listed in any of: PC § 667.5, subd. (c); PC § 1192.7, subd. (c); PC § 285; PC § 286 subd. (g) or (h); PC §288a, subds. (g) or (h); PC § 289, subd. (b); or is a 2nd or subsequent violation of PC § 647.6. (PC 290, subd. (d)(2), operative 1-1-21.)

If D. is not in tier 2 or 3, D. is in tier 1 if D. is required to register for a crime in listed in PC 290, subd. (c), that isn’t violent (PC 667.5, subd. (c) or serious (PC 1192.7, subd. (c)). (PC 290, subd. (d)(1), operative 1-1-21.)

A juvenile (M) is in tier 1 if, after being made a ward, M “discharged or paroled from [CDCR]” for a PC 290, subd. (c) offense not in PC 667.5, subd. (c) or PC 1192.7, subd. (c). M is in tier 2 if, after being made a ward, M “discharged or paroled from [CDCR] for a PC 290, subd. (c) offense that is in PC 667.5, subd. (c), or PC 1192.7, subd. (c). (PC 290.008, subd. (d)(1) and (d)(2), operative 1-1-21.) There is no Juv. Tier 3.

PC 290, subd. (d)(4) governs tier levels for D’s convicted of registerable sex offenses in out-of-state, federal, or military courts.

If D’s tier cannot be “immediately ascertained,” DOJ can place D. in “tier-to-be-determined category,” for up to 24 months. (PC 290, subd. (d)(5).

The court can, at conviction or sentence, for stated reasons, order registration. for a crime not in PC 290, subd. (c). Regis. is in tier 1 unless the court orders tier 2 or 3, after considering 5 listed factors, including the SARATSO score. (PC 290.006.)

Tier 1's minimum time before a petition to end registration can be filed is 10 yrs. (PC 290, subd. (d)(1), operative 1-1-21.) For juveniles, the tier 1 minimum is 5 yrs. (PC 290.008, subd. (d)(1).

Tier 2's minimum time before a petition is 20 yrs. For juveniles, the min. is 10 yrs. (PC 290, subd. (d)(2) and 290.008, subd. (d)(2), both operative 1-1-21.) But a petition to end registration for adults in tier 2 can be filed after 10 years if D. was under 21 at the incident, and other criteria are met. (PC 290.5, subd. (b)(1) and (b)(2).)

Tier 3 is lifetime registration. (PC 290, subd. (d)(3), operative 1-1-21.) Except if tier 3 is solely because of the SARATSO score, and other criteria are met, a petition to end registration can be filed after 20 years. (PC 290.5, subd. (b)(3).)

The start of the time before filing a pet., is "release" as defined. Time is tolled for incarcerations, placements, or civil commitments, except for arrests not resulting in convictions, adjudications, or supervision-violations. Time is extended 1 or 3 years for misd. or felony "conviction of failing to register." (PC 290, subd. (e).)

Petition to End PC 290 Registration.

SB 118 [§ 11], (Stats. 2020, Ch. 29) Amends PC 290.5 Operative July 1, 2021

See also Rules of Court and Forms

PC 290.5 [N.B.: For ease of understanding, after subd. (a) paragraph (1), material from subd. (b)(1) is set out, and then the subd. (a)(2) – (a)(4)]

PC 290.5, subd. (a)(1) A ... tier one or ... two [D] may file a petition in the superior court in the county [of registration] ... on or after their next birthday after July 1, 2021, following [D's] ... mandated minimum registration period,

or if the person is required to register pursuant to Section 290.008, [M] may file the petition in juvenile court on or after their next birthday after July 1, 2021, following [M's] ... mandated minimum registration period.

The petition shall contain proof of [D's]current registration....

PC 290.5, subd. (b)(1) A [tier 2] [D] ... may petition the superior court ... after 10 years from release from custody ...if ...: (A) the ... offense involved ... one [V] 14 to 17 years of age...; (B) [D] was under 21 years ... at the time ...; (C) the ... offense is not ... in [PC 667.5, subd. (c)], except [PC 288, subd. (a)], and (D), not ... in [PC] 236.1.

PC 290.5, subd. (b)(2) [Also] [D] has not been convicted of a new [registerable] offense ... or [PC 667.5, subd. (c) offense] since ... release[] ... on the [registerable] offense ... and has registered for 10 years pursuant to subdivision (e) of Section 290. [Criteria for the court to use at the hearing are listed]. If the petition is denied, [D] may not repetition ... for at least one year.

A [D] [in tier 3] based solely on [D's] risk level [PC 290, subd. (d)(3)(D)], may petition the court ... after 20 years from release ... if [D] [meets specified requirements]; except that a person required to register for [PC] 288 or an offense [in PC 1192.7, subd. (c)] ... shall not be permitted to petition for removal....

[Criteria for the court to use at a termination hearing are listed.] If the petition is denied, the person may not re-petition for termination for at least three years.

PC 290.5, subd. (a)(2): The petition shall be served on the registering law enforcement agency [LEA] and [D.A.] in the county [of filing] and on the [LEA] and [D.A.] of the county of conviction

The registering [LEA] and the ... [conviction LEA]... shall, within *60 days*, ... report to the [D.A.] and the ... court ... whether [D] [meets] the requirements [in PC 290, subd. (e)]. [Special provisions apply if [D] has an out-of-state, federal, or military registerable conviction (PC 290.005).]

The [filing-county D.A.] ... may, within *60 days* of receipt of the report from ... the registering [LEA], the [conviction LEA] ..., or the [conviction D.A.] ..., request a hearing ... if [D] has not fulfilled the requirement [of PC 290, subd. (e)], or if community safety would be significantly enhanced by [D's] continued registration.

If no hearing is requested, the petition ... shall be granted if the court finds ... [1] proof of current registration is presented ..., [2] the registering [LEA] reported that [D] met the requirement [in PC 290, subd. (e)], [3] there are no pending charges ... which could extend the time [of required registration] of the tier or change the person's tier ..., and [4] [D] is not in custody or on [supervision].

The court may summarily deny a petition if ...[D] does not meet the statutory requirements ... or ... has not fulfilled the filing and service requirements [The] court shall state the ... reasons [for denial].

PC 290.5, subd. (a)(3) [At the] hearing, the [D.A.] [can] present evidence [on] whether community safety would be significantly enhanced by requiring continued registration. ...

[Factors]: [1] the nature and facts of the ... offense; [2] the age and # of [Vs]; [3] whether any [V] was a stranger [as defined]; [4] criminal and ... noncriminal behavior before and after conviction ...; [5] the time ... [since D's last offense]; [6] [any] successful completion ... of a [qualified] sex offender ... program; and [7] [D's] ... risk of sexual or violent reoffense, including [any scores] on SARATSO static, dynamic, and violence risk assessment [tools]....

[This may be] heard and determined upon declarations, affidavits, police reports, or any other evidence ... which is reliable, material, and relevant.

Appointed Counsel for Indigent in Misdemeanor Cases When the Prosecution Appeals

California Rules of Court, rule 8.851(a)(1)(B) is amended to requires that on application the appellate division must appoint appellate counsel for defendant was represented by appointed counsel in the trial court or who establishes indigency and who is charged with a misdemeanor and the appeal is a critical stage of the criminal process.

The Advisory Committee Comment says that this rule addition was on account of *Gardner v. Appellate Division* (2019) 6 Cal.5th 998, holding that an indigent is entitled to appointed counsel when the prosecution appeals the grant of a suppression motion.

N.B. On remand, the court of appeal held in *Gardner v. Appellate Division* (2019) 41 Cal.App.5th 1139, 1142, that the appellate division cannot appoint the public defender because the trial court is not statutorily authorized to appoint the Public Defender in that circumstance. (This does not seem to prohibit the Public Defender from choosing to be the appellate attorney in this circumstance.)



SEARCH AND SEIZURE

Tracking Device Definition Expanded to Include Software

AB 904. (Stats. 2020, Ch. 63.) **Amends PC 1534.**

[PC 1524 states when an SW may issue; this includes tracking devices. PC 1534 subd. (b) is about tracking devices. Amended is subd. (b)(6)]:

SENTENCES, FINES, FEES, REIMBURSEMENTS AND PENALTIES

Twenty-Three Categories of Fees and Reimbursements Repealed.

AB 1869 (Stats. 2020, Ch. 92.)

Affects the following sections:

GC 6111. 27706, 27707, 27712, 27750, 27752, 27753, 29550, 29550.1, 29550.2, and 29550.3 29550, and 29551,

PC 295, 987, 987.2, 987.4, 987.5, 987.8, 987.81, 1000.3, 1203, 1203.016, 1203.018, 1203.1b, 1203.1bb, 1203.1d. 1203.1e, 1203.9, 1208, 1208.2, 1208.3, 1210.15, 1465.9, 4024.2, 3010.8, and 6266.

Summary by GB: This bill repeals the authority to collect many fees for probation, mandatory supervision, processing arrests and citations, administering home detention programs, continuous electronic monitoring programs, work furlough programs, and work release programs.

Some of these repeals are operative immediately, but most are not operative until July 1, 2021.

This bill makes the unpaid balance of these fees unenforceable and uncollectible and requires any portion of a judgment imposing those costs to be vacated. *Operative July 1, 2021.*

This bill also deletes the court's authority to assess fees for services of the public defender or appointed counsel.

Defense counsel should, at sentencing or before, check on any fees that might be imposed to see if they have been repealed.

SELECTED PROVISIONS OF THIS BILL:

GC 6111 is added:

(a) On and after July 1, 2021, the unpaid balance of any court-imposed costs pursuant to Section 27712, [29550, subd. (c) or (f)], and ... 29550.1, 29550.2, and 29550.3, as those sections read on June 30, 2021, is unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.

GC 27712, authorizes courts to impose on D the costs of appointed counsel. That section is **repealed** *as of July 1, 2021*.

GC 29550, subds. (c) and (d), 29550.1, 29550.2, and 29550.3 permit various entities, such as cities, school districts, colleges and universities, special districts, and others, to assess various costs and fees for arrests and booking, if the person is convicted. These subdivisions are **repealed** *as of July 1, 2021*.

PC 987.4 provides that **“When the public defender or an assigned counsel represents a ... minor in a criminal proceeding, ..., the court may order the parent or guardian ... to reimburse the county for ... such expense.”** [This section is **repealed** *as of July 1, 2021*.]

PC 987.5 provides for a **registration fee of \$50 when represented by appointed counsel**. [This section is **repealed** *as of July 1, 2021*.]

PC 987.8, subd. (b), says, **“If [D] is provided legal assistance, either through the public defender or [court appointed] private counsel ..., upon conclusion of the criminal proceedings..., the court may, ..., [determine] ... [D’s ability] to pay ... the cost thereof...”** [As of July 1, 2021, this statute is **repealed**.]

PC 1000.3, subd. (e), as amended eff. Jan. 1, 2021, “**Prior to dismissing the charge ... or terminating pretrial diversion, the court shall consider [D’s] ability to pay and whether [D] has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met their financial obligation to the program, if any. As provided in Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.**” [*As of July 1, 2021, the second sentence of subd. (e), requiring reimbursement to the probation department, is repealed. This does not eliminate other costs of this drug diversion (PC 1000) program.*]

PC 1203.016 permits counties to establish, for “**inmates committed to a county jail ... or granted probation, or ... participating in a work furlough program, [a program under which they] may voluntarily participate or involuntarily be placed in a home detention program during their sentence**” Subdivision (g) authorizes “**a program administrative fee.**” [Authorization for that fee is repealed, as of July 1, 2021. This does not eliminate other costs of home detention.]

PC 1203.018 permits counties to establish “**a program under which inmates being held in lieu of bail in a county jail ... may participate in an electronic monitoring program**” Subdivision (j) says, “**The [county] may prescribe a program administrative fee to be paid by each ... participant.**” [*As of July 1, 2021, subdivision (j) is repealed. This does not eliminate other costs associated with electronic monitoring.*]

PC 1203.1b says, “**(a) In any case in which [D] is convicted ..., and in any case in which [D] is granted probation, given a conditional sentence, or receives ... mandatory supervision ..., the probation officer ... shall [deter-**

mine D’s ability] to pay [for] any probation supervision, conditional sentence, or ... mandatory supervision, of conducting any preplea investigation and preparing any preplea report of conducting any presentence investigation and preparing any presentence report ... and of [interstate or intrastate transfer] (b) The court shall order the defendant to pay [those] costs ... based on [that] report....” *As of July 1, 2021*, this entire section is repealed.

PC 1203.1e says that when D “is eligible [for county parole], the court shall, ..., make a determination of the ability of [D] to pay ... the reasonable cost of [that].” [*As of July 1, 2021*, this section is repealed.]

PC 1208.2, subd. (a)(1) says “This section shall apply to individuals authorized to participate in a work furlough program pursuant to [PC] 1208, or ... an electronic monitoring or home detention program pursuant to [PC] 1203.016 or 1203.018, or ... a county parole program pursuant to [PC 3074 et seq.]”

(b)(1) A board of supervisors that implements programs identified [above] may prescribe a program administrative fee and an application fee, ...

On July 1, this is amended as follows

1208.2. [Subd. (a) is unchanged]

(b)(1) A board of supervisors that implements programs [listed in subd. (a)] shall not impose a program administrative fee.

(2) ... [P]privately operated electronic home detention program pursuant to Section 1203.016 or 1203.018, [can charge] ... a program administrative fee and application fee....

STATUTES OF LIMITATION

Medical misconduct: misuse of sperm, ova, or embryos.

AB 2014 (Stats 2020, ch. 244 Adds to PC 803 a new subd. (n).

From the Legislative Counsel’s Digest:

This bill ... require[d] a criminal complaint for [specified] crimes involving the unlawful use or implantation of sperm, ova, or embryos be filed within one year after the discovery of the offense or within one year after the offense could have reasonably been discovered.” [Previously, the limitations period was within three years of commission of the offense.]



**SUPERVISION: PROBATION, PAROLE, MANDATORY
SUPERVISION AND POSTRELEASE COMMUNITY SUPERVISION.**

Elderly Parole

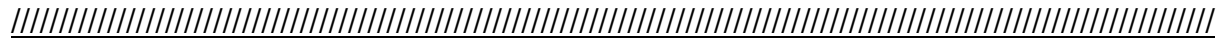
AB 3234. (Stats. 2020, Ch. 334.) Amends PC 3055.

From the Legislative Counsel’s Digest:

[Before this,] the Elderly Parole Program [that] review[s] parole suitability of eligible inmates [applied to those] 60 ... or older and who have served a minimum of 25 years....

This bill [lowers] the minimum age ... to 50 ... and ... [lowers required prison to] 20 years ... to be eligible

For another aspect of AB 3234, see “Diversion.”



Length of Probation Shortened.

AB 1950 (Stats. 2020, Ch. 328). Amends PC 1203a and 1203.1.

From the Legislative Counsel’s Digest:

[Before this bill, the] law authorize[d] courts ... to suspend [a misdemeanor] sentence [grant] probation ... for [up to] 3 years, except when the ... maximum sentence imposed ... exceeds 3 years, in which case ... probation [could last longer than] 3 years, but not to exceed the time for which the person may be imprisoned.

This bill ... instead restrict[s] the period of probation for a misdemeanor to no longer than one year, except as specified.

[Before this bill, the] law authorize[d] the court, [in a felony case] in the order granting probation, to suspend the imposition or execution of sentence [for up to] the maximum term for which the person could be imprisoned, except as specified.

This bill ... instead authorize[s] a court to impose a term of [felony] probation not longer than 2 years, except as specified.

PC 1203a, as amended:

(a) In ... misdemeanor cases.... [t]he court may suspend the imposition or execution of the sentence and [grant] probation for a period not to exceed one year.

(b) The one-year probation limit ... shall not apply to any offense that includes specific probation lengths within its provisions.

[Examples of misdemeanor statutes that require a longer term of probation: DUI statutes, such as VC 23600 requiring three to five years; PC 1203.097, requiring 36 months in DV cases.]

PC 1203.1, as amended, in relevant part:

(a) The court ... in ... granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for [up to] two years....

¶...¶

(m) The two-year probation limit in subdivision (a) shall not apply to:

(1) An offense listed [PC 667.5, subd. (c)] and an offense that includes specific probation lengths within its provisions. For these ..., the court ... may [grant probation for up to] the maximum possible term of the sentence....

(2) A felony conviction for [PC 487, subd. (b)(3), 503, and] 532a, if the total value of the property taken exceeds \$25,000. For these ..., the court ... may [grant probation for up to] three years,

[Question by GB: Q: Can a D on probation as of Jan. 1, 2021, have the term shortened? Research can start with *P. v. McKenzie* (2020) 9 Cal.5th 40. The question there was whether a [D] who was placed on probation after imposition of sentence is suspended, and who did not appeal, could take advantage of ameliorative statutory amendment that took effect during a later appeal from a judgment revoking probation and imposing sentence. The Court of Appeal answered yes.]



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