New Legislation Webinar 2023

New Criminal, Juvenile, and Civil Commitment Laws From the 2023 Legislative Session

December 6, 2023

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FDAP

Part I (Nat):

(bills not enacted this year)

RJA and Post-Conviction Relief

Juvenile Delinquency

Firearms

Miscellaneous Criminal Offenses

Part II (Deborah):

Controlled Substances

Domestic Violence

Mental Health Diversion

Miscellaneous Criminal Issues

Civil Commitment

Part III (Richard):

AB 600!

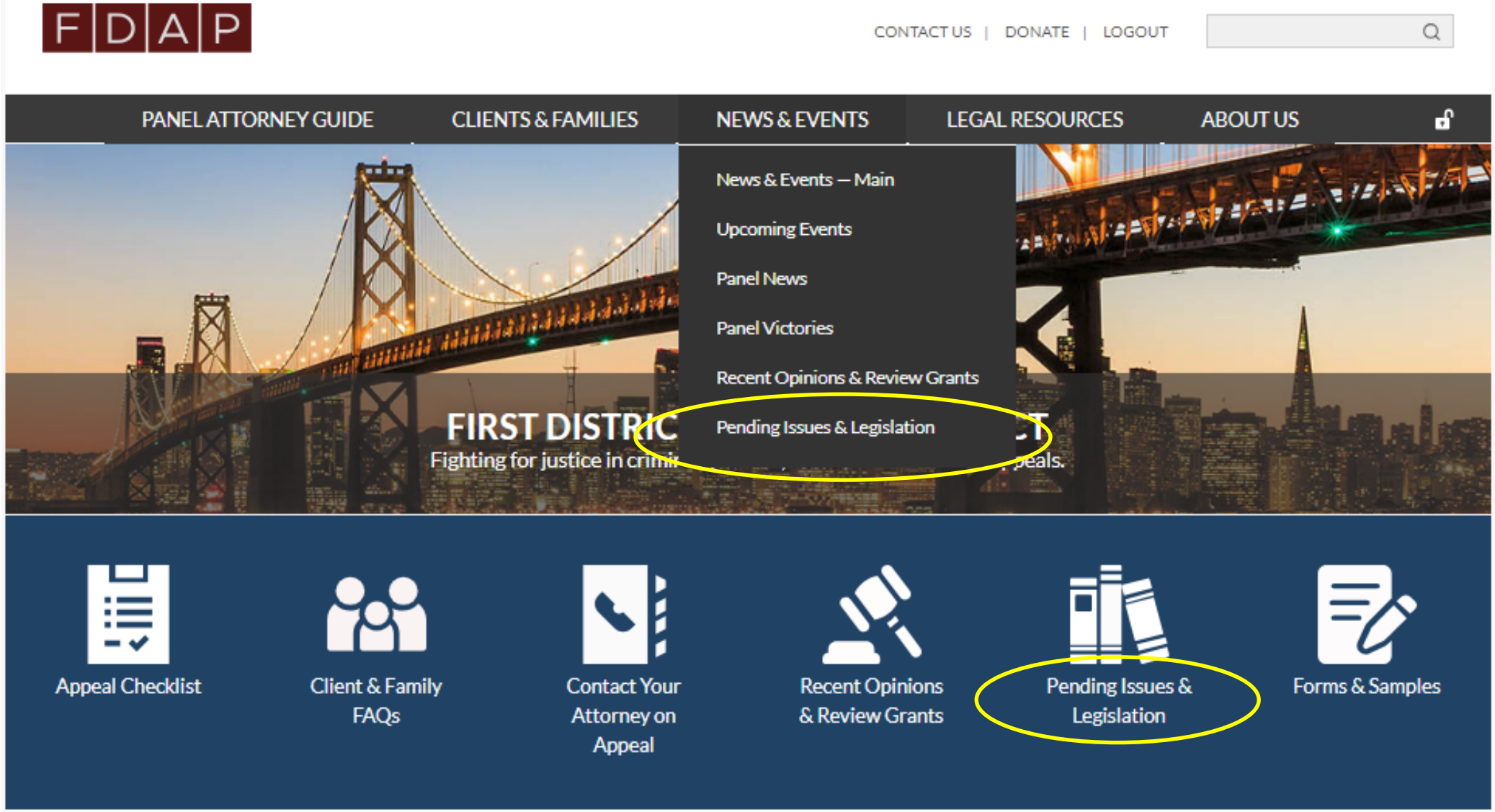
- Our goal is to provide a general overview, not a detailed analysis.

- All the bills we'll be discussing were enacted in the 2023 legislative session and will take effect Jan. 1, 2024 (unless otherwise indicated).

- We're hoping to have time for questions at the end.

- The written materials and MCLE certificates and evaluation forms will be emailed out after the presentation, probably tomorrow.

- For more information on new and pending legislation, see the Pending Issues and Legislation page on our website.



FDAP Is Hiring

The First District Appellate Project (FDAP) is hiring two full-time staff attorneys. We are looking for attorneys experienced with handling cases in the

bills NOT enacted this year, but COULD be enacted next year:

- AB 852: Would add PC 17.3 to declare the Legislature's intent "to rectify the racial bias that has historically permeated our criminal justice system," and to require a sentencing court to "consider the disparate impact on historically disenfranchised and system-impacted populations."

- AB 1186: Would prohibit a juvenile court from ordering monetary victim restitution.

- AB 1310: Would enact PC 1385.2 to create a recall and resentencing process for persons "who, on or before Jan. 1, 2018, suffered a conviction … of an enhancement under PC 12022.5 or 12022.53."

- SB 94: Would add PC 1172.5 to create a recall and resentencing process for persons sentenced to LWOP for a special-circumstance murder committed before Jun. 5, 1990.

RJA and Post-Conviction Relief (5 Bills)

AB 600
(PC 1172.1)

AB 1118
(RJA)

SB 78
(wrongful conviction compensation)

SB 97
(PC 1473)

SB 749
(Prop 47 petitions)

RJA and Post-Conviction Relief (5 Bills)

AB 600
(PC 1172.1)

AB 1118
(RJA)

SB 78
(wrongful conviction compensation)

SB 97
(PC 1473)

SB 749
(Prop 47 petitions)

AB 600 (PC 1172.1)

- Amends PC 1172.1 to authorize a court to resentence a defendant on its own motion "at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law." Makes various related changes to PC 1172.1.

- See Part III of this presentation.

AB 1118 (RJA)

- Amends PC 745 (the RJA) to clarify that, "[f]or claims based on the trial record, a defendant may raise a claim alleging a violation of PC 745(a) on direct appeal from the conviction or sentence," and "may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section."

- See 10/30/2023 and 11/30/2023 presentations.

SB 78 (wrongful conviction compensation)

Makes various defense-friendly changes to the provisions governing wrongful conviction compensation, including by amending PC 1485.55 to authorize a person to petition for such compensation if the court grants a writ of habeas corpus or vacates a judgment and the charges against the person are subsequently dismissed or the person is acquitted on retrial.

SB 749 (Prop 47 Petitions)

Amends PC 1170.18 to remove the November 4, 2022 deadline for petitions seeking reduction of prior felony convictions under Prop 47.

Note: This bill took effect immediately upon enactment on Oct. 8, 2023.

SB 97 (PC 1473)

Amends PC 1473, the basic habeas statute.

SB 97 (PC 1473)

PC 1473, as currently written:

(a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons …

SB 97 (PC 1473)

PC 1473, as currently written:

(b)(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

SB 97 (PC 1473)

PC 1473, as currently written:

(b)(3)(A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

SB 97 (PC 1473)

PC 1473, as currently written:

(b)(4) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

SB 97 (PC 1473)

PC 1473, as amended by SB 97:

~~(1)~~ *(A)* False evidence that is ~~substantially~~ material ~~or probative~~ on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

SB 97 (PC 1473)

PC 1473, as amended by SB 97:

~~(3)~~ *(C)* ~~(A)~~ *(i)* New evidence exists that is ~~credible, material,~~ presented without substantial delay, ~~and of such decisive force and value that it would have~~ *is admissible, and is sufficiently material and credible that it* more likely than not *would have* changed the outcome ~~at trial.~~ *of the case.*

~~(B)~~ *(ii)* For purposes of this section, "new evidence" means evidence that has ~~been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.~~ *not previously been presented and heard at trial and has been discovered after trial.*

SB 97 (PC 1473)

PC 1473, as amended by SB 97:

~~(4)~~ (D) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial ~~and contributed to the conviction, such that it would have~~ or a hearing and that expert testimony more likely than not ~~changed~~ affected the outcome ~~at trial.~~ of the case.

SB 97 (PC 1473)

How will these amendments affect the showing required for habeas relief based on false evidence, new evidence, or disputed expert testimony?

SB 97 (PC 1473)

PC 1473, as amended by SB 97:

(g) For purposes of this section, if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

SB 97 (PC 1473)

PC 1473, as amended by SB 97:

(h) (1) If after the court grants postconviction relief under this section and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

(A) The petitioner and postconviction counsel both agree for postconviction counsel to be appointed.

(B) Postconviction counsel is qualified to handle trials.

Juvenile Delinquency (5 Bills)

AB 134
(secure track)

AB 1643
(victim restitution threshold)

SB 448
(county of residence)

SB 545
(transfer hearings)

SB 883
(electronic monitoring review hearings)

Juvenile Delinquency (5 Bills)

AB 134
(secure track)

AB 1643
(victim restitution threshold)

SB 448
(county of residence)

SB 545
(transfer hearings)

SB 883
(electronic monitoring review hearings)

AB 134 (secure track)

Among other changes:

Makes various amendments to WIC 875, governing secure track commitments.

Amends PC 2020 to rename San Quentin State Prison as "San Quentin Rehabilitation Center."

Note: This bill took effect immediately upon enactment on Jul. 10, 2023.

AB 1643 (victim restitution threshold)

Amends WIC 653.5 and 654.3 to increase, from $1,000 to $5,000, the threshold amount of victim restitution that requires a probation officer to commence delinquency proceedings within 48 hours, and that makes a minor presumptively ineligible for informal supervision.

SB 448 (county of residence)

Amends WIC 635 and 636 to prohibit a juvenile court from detaining a minor "based solely on the minor's county of residence," and to specify that "a minor shall be given equal consideration for release on home supervision pursuant to WIC 628.1, which may include electronic monitoring pursuant to WIC 628.2, regardless of whether the minor lives in the county where the offense occurred."

SB 883 (electronic monitoring review hearings)

Among other changes:

Amends WIC 628.2 to clarify that a review hearing for a minor placed on electronic monitoring must occur “no less than” every 30 days.

SB 545 (transfer hearings)

Amends WIC 707, 707.2, and 707.5, regarding transfer hearings.

SB 545 (transfer hearings)

WIC 707 authorizes the prosecution to move to transfer a minor accused of committing certain offenses when they were at least 16 years of age to adult criminal court.

SB 545 (transfer hearings)

WIC 707, as currently written:

- "In order to find that the minor should be transferred to a court of criminal jurisdiction, the court shall find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court."

- The court must consider five factors: "degree of criminal sophistication"; whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; "previous delinquent history"; "success of previous attempts by the juvenile court to rehabilitate the minor"; "circumstances and gravity of the offense."

SB 545 (transfer hearings)

WIC 707, as currently written:

(A) (i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

SB 545 (transfer hearings)

WIC 707, as currently written:

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

SB 545 (transfer hearings)

WIC 707, as amended by SB 545:

(A) (i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court ~~may~~ *shall* give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged ~~offense,~~ *offense;* the minor's impetuosity or failure to appreciate risks and consequences of criminal ~~behavior,~~ *behavior;* the effect of familial, adult, or peer pressure on the minor's ~~actions, and~~ *actions;* the effect of the minor's family and community ~~environment and childhood trauma~~ *environment; the existence of childhood trauma; the minor's involvement in the child welfare or foster care system; and the status of the minor as a victim of human trafficking, sexual abuse, or sexual battery* on the minor's criminal sophistication.

SB 545 (transfer hearings)

WIC 707, as amended by SB 545:

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court ~~may~~ *shall* give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

(iii) When evaluating the criterion specified in clause (i), the court shall consider evidence offered that indicates that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor.

SB 545 (transfer hearings)

WIC 707.2, as added by SB 545:

Notwithstanding a finding made pursuant to paragraph (3) of subdivision (a) of Section 707 that a minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court, if the court, during a transfer hearing pursuant to Section 707, receives evidence that the minor was trafficked, sexually abused, or sexually battered by the alleged victim prior to or during the commission of the alleged offense, the minor shall be retained under the jurisdiction of the juvenile court unless the court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense did not traffic, sexually abuse, or sexually batter the minor.

SB 545 (transfer hearings)

WIC 707.5, as amended by SB 545:

(a) In any case in which a person is transferred from juvenile court to a court of criminal jurisdiction … , upon conviction or entry of a plea, the person may … request the criminal court to return the case to the juvenile court for disposition …

… If the court receives evidence that the minor was trafficked, sexually abused, or sexually battered by the alleged victim prior to or during the commission of the alleged offense, the case shall be returned to juvenile court, … unless the court finds, by clear and convincing evidence, that the person against whom the charged offense was committed had not sexually abused, sexually battered, or trafficked the minor prior to or during the commission of the alleged offense. This paragraph shall be construed to prioritize the successful treatment and rehabilitation of minor victims of human trafficking and sex crimes who commit acts of violence against their abusers. It is the intent of the Legislature that these minors be viewed as victims and provided treatment and services in the juvenile or family court system.

SB 545 (transfer hearings)

Retroactivity?

SB 545 is highly likely to be found to apply retroactively to nonfinal cases.

In any transfer appeal, consider whether SB 545's changes to WIC 707, 707.2, and 707.5 were properly applied.

Firearms (2 Bills)

AB 732
(relinquishment of firearms)

SB 2
(response to *Bruen*)

Firearms (2 Bills)

AB 732
(relinquishment of firearms)

SB 2
(response to *Bruen*)

AB 732 (relinquishment of firearms)

Amends PC 29810 to provide that a defendant required to relinquish their firearms following a conviction must do so within 48 hours of the conviction if they are out of custody.

SB 2 (response to *Bruen*)

In response to *New York State Rifle & Pistol Assn., Inc. v. Bruen* (2022) 142 S.Ct. 2111, amends various provisions relating to carrying concealed firearms and carry concealed weapons (CCW) licenses.

SB 2 (response to *Bruen*)

PC 26150 and 26155, as written:

(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the [sheriff of a county or chief or other head of a municipal police department of any city or city and county] may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

[…]

SB 2 (response to *Bruen*)

PC 26150 and 26155, as written:

(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the [sheriff of a county or chief or other head of a municipal police department of any city or city and county] may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

[…]

SB 2 (response to *Bruen*)

PC 26150 and 26155, as amended by SB 2:

(a) When a person applies for a ~~license~~ *new license or license renewal* to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the [sheriff of a county or chief or other head of a municipal police department of any city or city and county] ~~may~~ *shall* issue *or renew* a license to that person upon proof of all of the following:

(1) The applicant is ~~of good moral character.~~ *not a disqualified person to receive such a license, as determined in accordance with the standards set forth in Section 26202.*

(2) ~~Good cause exists for issuance of the license.~~ *The applicant is at least 21 years of age, and presents clear evidence of the person's identity and age, as defined in Section 16400.*

SB 2 (response to *Bruen*)

At least two lawsuits have been filed in federal district court (C.D. Cal.) aimed at preventing implementation of SB 2:

https://www.sfchronicle.com/politics/article/california-gun-lawsuit-18364601.php

https://www.sfchronicle.com/politics/article/california-concealed-carry-18533329.php

Miscellaneous Criminal Offenses (7 Bills)

AB 92
(possession of body armor)

AB 829
(animal abuse)

AB 1371
(statutory rape)

AB 1539
(double voting)

SB 14
(human trafficking)

SB 281
(aggravated arson)

SB 602
(trespass)

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SB 14
(human trafficking)

SB 281
(aggravated arson)

SB 602
(trespass)

AB 92 (possession of body armor)

Amends PC 31360 to make it a misdemeanor for a person prohibited from possessing a firearm to possess body armor.

AB 829 (probation for animal abuse)

Adds PC 600.8 to require a court to order a person placed on probation for specified animal abuse offenses to successfully complete counseling, and to require the court to also consider ordering the person to undergo a mental health evaluation for the purpose of determining whether a "higher level of treatment" is necessary, in which case the person must complete that level of treatment.

AB 1371 (probation for statutory rape)

Amends PC 261.5 to prohibit a person placed on probation for violating PC 261.5(d) (unlawful sexual intercourse with a minor under 16 years of age when 21 years of age or older) from "complet[ing] their community service at a school or location where children congregate."

AB 1539 (double voting)

Adds Elections Code 18560.1 to make it a misdemeanor for a person to vote or attempt to vote in an election held in California and in an election held in another state on the same date.

SB 281 (aggravated arson)

Amends PC 451.5 to:

(1) increase the threshold amount for the property-damage aggravating factor for aggravated arson from $8.3 million to $10.1 million;

(2) exclude from the calculation of the threshold amount "damage to, or destruction of, inhabited dwellings"; and

(3) extend the operation of the property-damage aggravating factor to Jan. 1, 2029.

SB 602 (trespass requests for assistance)

Amends PC 602(o) to extend the duration of trespass requests for assistance to either 12 months or a period determined by local ordinance, whichever is shorter, for properties where there is a fire hazard or the owner is absent.

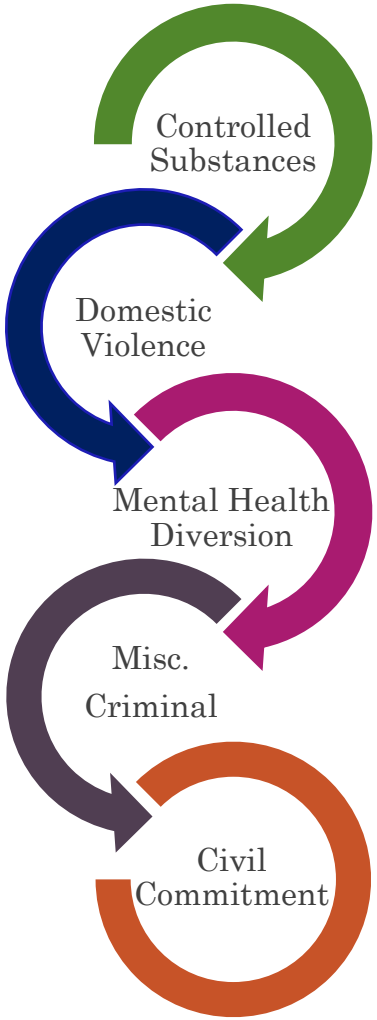
SB 14 (human trafficking)

Amends PC 1192.7(c) to expand the definition of "serious felony" to include "human trafficking of a minor, in violation of PC 236.1(c), except, with respect to a violation of PC 236.1(c)(1), where the person who committed the offense was a victim of human trafficking, as described in PC 236.1(b) or (c), at the time of the offense."

SB 14 (human trafficking)

Amends PC 1192.7(c) to expand the definition of "serious felony" to include "human trafficking of a minor, in violation of PC 236.1(c), except, with respect to a violation of PC 236.1(c)(1), where the person who committed the offense was a victim of human trafficking, as described in PC 236.1(b) or (c), at the time of the offense."

Overview Part II:



Controlled Substances: A.B. 701 | A.B. 890 | S.B. 46 | S.B. 250 | S.B. 753

Domestic Violence: A.B. 467 | A.B. 479 | A.B. 860

Mental Health Diversion: A.B. 455 | S.B. 43

Miscellaneous Criminal: A.B. 709 | A.B. 791 | A.B. 1104 | A.B. 1226 | S.B. 852 | S.B. 883

Civil Commitment: A.B. 1253 | S.B. 990

1

Controlled Substances

S.B. 46	S.B. 250	S.B. 701	S.B. 753	S.B. 890

Senate Bill 46
Controlled Substances: Treatment

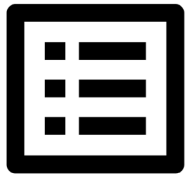
Provides that "[w]hen a person who is otherwise eligible for probation is granted probation . . . or sentenced pursuant to PC 1170(h), after conviction for a violation of any controlled substance offense . . . , the trial court shall, as a condition of probation, order that person to complete successfully a controlled substance education or treatment program, as appropriate for the individual."

Amends Health and Saf. Code, § 11373

Amends Pen. Code, § § 1210, 1211

January 1, 2024

Senate Bill 250
Controlled Substances: Punishment



Specifies that "it shall not be a crime for a person to possess for personal use a controlled substance . . . if the person delivers the controlled substance . . . to the local public health department or law enforcement and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances, if known."

Amends Health and Saf. Code, § 11376.5

Adds Health and Saf. Code, § 11376.6

January 1, 2024

California's 911 Good Samaritan Law provides limited protection from arrest, charge and prosecution for people who seek emergency medical assistance at the scene of a drug-related overdose, so long as the reporting party does not obstruct medical or law enforcement personnel.

SB 250 expands California's 911 Good Samaritan Law to include self-reporting of overdoses from a health-monitoring device such as a smart watch.

SB 250 also extends immunity not only for individuals reporting drug-related overdoses in cases of medical assistance, but also for individuals reporting substances that may be adulterated with other substances to the local public health department or law enforcement.

Health & Saf. Code, § 11376.5(d)(2)

"Seeks medical assistance" or "seek medical assistance" includes any communication made verbally, in writing, or in the form of data from a health-monitoring device, including, but not limited to, smart watches, for the purpose of obtaining medical assistance.

Health & Saf. Code, § 11376.6(a)(1)

Notwithstanding any other law, it shall not be a crime for a person to possess for personal use a controlled substance, controlled substance analog, or drug paraphernalia if the person delivers the controlled substance or controlled substance analog to the local public health department or law enforcement and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances, if known.

The identity of the reporting party shall remain confidential. (Health and Saf. Code, § 11376.6(a)(2)(A))

The reporting party may, ***but shall not be required to***, reveal the identity of the individual from whom the person obtained the controlled substance or controlled substance analog. (Health and Saf. Code, § 11376.6(a)(2)(B))

No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred. (Health and Saf. Code, § 11376.6(b))

Assembly Bill 701
Controlled Substances: Fentanyl

Applies the existing weight enhancements that increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl.

Amends Health and Saf. Code, § § 11370 & 11372

January 1, 2024

Existing law imposes an additional term of three to 25 years (Health and Saf. Code, § 11370), and authorizes a trial court to impose a specified fine (Health and Saf. Code, § 11372), upon a person who is convicted of specified drug offenses with respect to heroin, cocaine base, and cocaine, if the substance exceeds a specified weight.

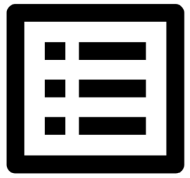
A.B. 701 adds fentanyl to the substances for which additional terms and fine can be imposed.

A.B .701 also specifies that a person must know of the substance's nature or character as a controlled substance in order to be subjected to the additional term of imprisonment.

Health and Saf. Code, § 11370(a)(1)

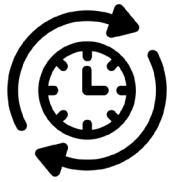
~~Any~~ A person convicted of a violation of, or of a conspiracy to violate, [HSC] Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, fentanyl, cocaine base as specified in paragraph (1) of subdivision (f) of [HSC] Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of [HSC] Section ~~11055~~ 11055, when the person knew of the substance's nature or character as a controlled substance, shall receive an additional term as follows: [list of weights and corresponding sentencing enhancement]

Senate Bill 753
Cannabis: Water Resources



Provides that cultivation of more than six cannabis plants is a wobbler where the cultivation intentionally or with gross negligence causes substantial environmental harm to "surface or ground water."

Amends Health and Saf. Code, § 11358



January 1, 2024

Under existing law, a person 18 years of age or older who plants, cultivates, harvests, dries, or processes more than 6 living cannabis plants, or any part thereof, may be charged with a felony if specified conditions exist, including when the offense causes substantial environmental harm to public lands or other public resources.

S.B. 753 expands the scope of a crime to when planting, cultivating, harvesting, drying, or processing marijuana results in substantial environmental harm to "surface or groundwater."

Health & Saf. Code, § 11358(d)(3)(G)

A person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if any of the following conditions exist:

The offense resulted in any of the following:

Intentionally or with gross negligence causing substantial environmental harm to ~~public lands~~ surface or ground water, public lands, or other public resources.

Assembly Bill 890
Controlled Substances: Probation

Requires a court to order a defendant placed on probation for specified drug offenses involving either fentanyl or another specified opiate to complete a fentanyl and synthetic opiate education program.

Amends Health and Saf. Code, § § 11356.6 & 11373

January 1, 2024

2

Domestic Violence

A.B. 467

A.B. 479

A.B. 806

Assembly Bill 467
Domestic Violence: Restraining Orders

Authorizes the modification of a protective order at any time throughout the duration of the order in cases where the defendant was convicted of domestic violence or other specified offenses.

Amends Pen. Code, § 136.2

January 1, 2024

Existing law allows the court to issue a protective order limiting a defendant's contact with the victim if the defendant has been convicted of:

1. Domestic Violence
2. Human Trafficking
3. A Crime In Furtherance Of A Criminal Street Gang
4. Registerable Sex Offense

The protective order may be valid for up to 10 years, as determined by the court.

A.B. 467 clarifies that the order may be modified by the sentencing court throughout the duration of the order.

Pen. Code, § 136.2(i)(1):

When a criminal defendant has been convicted of a crime involving domestic ~~violence~~ violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of subdivision (a), (b), or (c) of Section 236.1 prohibiting human trafficking, Section 261, 261.5, former Section 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county ~~jail or~~ jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. The order may be modified by the sentencing court in the county in which it was issued throughout the duration of the order. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family.

Background: Some courts have determined that if the defendant is no longer serving a sentence or is on probation, they do not have the jurisdiction to modify the order, even if the order is active and both the victim and defendant request it.

This is detrimental to both victims and defendants:

Victims who seek to modify a Peaceful Contact Order (PCO) or No Contact Order (NCO) cannot change the order, which can endanger their safety.

Couples who reconcile and wish to have a PCO cannot change the order, thereby exposing the defendant to additional criminal protective order violations for consensual contact.

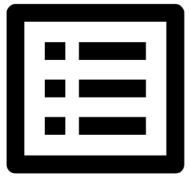
Assembly Bill 479
Alternative Domestic Violence Program

Extends, until July 1, 2026, the authorization for the counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer alternative programs for individuals convicted of domestic violence.

Amends Pen. Code, § 1203.099

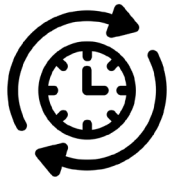
July 21, 2023

Assembly Bill 806
Criminal Procedure: Crimes In Multiple Jurisdictions



Expands the list of offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses.

Amends Pen. Code, § 784.7, subd. (b)



January 1, 2024

Current law allows for certain specifically enumerated offenses (mostly sex offenses and domestic violence related offenses) to be joined and tried in any county where at least one of the offenses occurred ***so long as*** the defendant and the victim are the same for all the offenses.

A.B. 806 also makes this provision applicable to “any crime of domestic violence.”

Additionally, A.B. 806 makes the joinder subject to a hearing on consolidation of the offenses.

Pen. Code, § 136.2(i)(1):

If more than one violation of Section 243.4, 261.5, 273a, 273.5, ~~or 646.9~~ 646.9, or any crime of domestic violence as defined in subdivision (b) of Section 13700 occurs in more than one jurisdictional territory, and the defendant and the victim are the same for all of the offenses, the jurisdiction of any of those offenses and for any offenses properly joinable with that ~~offense,~~ offense is in any jurisdiction where at least one of the offenses ~~occurred.~~ occurred, subject to a hearing pursuant to Section 954 in the jurisdiction of the proposed trial. At the hearing pursuant to Section 954, the prosecution shall present written evidence that all district attorneys in counties with jurisdiction over the offenses agree to the venue. Charged offenses from jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction.

3

Mental Health Diversion

A.B. 455

A.B. 1412

Assembly Bill 1412
Pretrial Diversion: Borderline Personality Disorder

Removes borderline personality disorder from the list of mental disorders excluded from mental health diversion.

Amends Pen. Code, § 1001.36

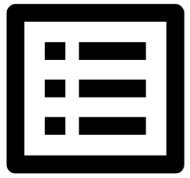
January 1, 2024

A.B. 1412 removes borderline personality disorder from the list of mental disorders excluded from mental health diversion

Pen. Code, § 1001.36(b)(1):

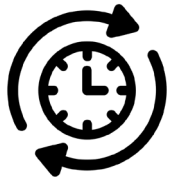
The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality ~~disorder, borderline personality disorder,~~ disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

Assembly Bill 455
Firearms: Prohibited Persons



Provides that, where a defendant is granted mental health diversion, "[t]he prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion."

Amends Pen. Code, § 1001.36



July 1, 2024

Existing law prohibits specified persons (e.g., those who have been convicted of a felony or certain misdemeanors, those who have been taken into custody because they are danger to themselves or others, those who have been placed under a conservatorship, etc.) from possessing or receiving a firearm.

A.B. 455 permits the prosecution to request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion, because they are a danger to themselves or others.

Pen. Code, § 1001.36(m)

The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

The prosecution bears the burden of proving, ***by clear and convincing evidence***, that both of the following are true:

The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

&

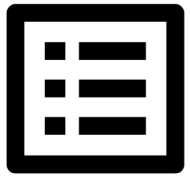
The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

4

Miscellaneous Criminal

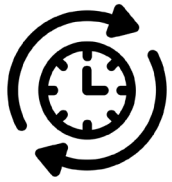
A.B. 709	A.B. 791	A.B. 1104	A.B. 1226	S.B. 852	S.B. 883

Assembly Bill 709
Criminal History Information



Allows a prosecutor to disclose to "a public defender's office, an alternate public defender's office, or a licensed attorney of record" a list of cases that may involve *Brady* evidence relating to a testifying peace officer.

Amends Pen. Code, § 13300



January 1, 2024

Existing law requires the local criminal justice agency to furnish specified arrest records to, among other entities, a public defender or attorney of record when representing a person in specified proceedings or when statutory or decisional law authorized access.

A.B. 709 authorizes a public prosecutor to provide a list containing only the names of the peace officer and defendant and the corresponding case number to a public defender's office, an alternative public defender's office, or a licensed attorney of record in a criminal case to facilitate and expedite notifying counsel representing other criminal defendants whose cases may involve testimony by that peace officer of exculpatory evidence or impeachment evidence involving that peace officer.

Pen. Code, § 13300(o):

A public prosecutor may provide a public defender's office, an alternate public defender's office, or a licensed attorney of record in a criminal case with a list containing only the names of the peace officer and defendant and the corresponding case number to facilitate and expedite notifying counsel representing criminal defendants whose cases may involve testimony by that peace officer of exculpatory or impeachment evidence involving that peace officer. Any disclosure made pursuant to this subdivision shall only be made upon agreement by the public defender's office, alternate public defender's office, or the licensed attorney of record in a criminal case. Any disclosure pursuant to this subdivision shall not constitute disclosure under any other law, nor shall any privilege or confidentiality be deemed waived by that disclosure. This subdivision shall not be construed to otherwise limit any legal mandate to disclose evidence or information, including, but not limited to, the disclosures required under Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

Assembly Bill 791
Postconviction Bail

Prohibits a court from granting postconviction bail to a person convicted of an offense punishable by death or life without the possibility of parole and requires the court to remand the person into custody upon conviction.

Amends Pen. Code, § § 1166 and 1272

January 1, 2024

Existing law requires a defendant out on bail, if a verdict is rendered against them, to be committed to the custody of the county to await judgment of the court upon the verdict, unless the court concludes that various factors, including the protection of the public and the probability of the defendant failing to appear, support a decision to allow the defendant to remain out on bail.

A.B. 791 prohibits a court from granting postconviction bail to a person convicted of an offense punishable by death or LWOP and requires the court to remand the person into custody upon conviction.

Pen. Code, § 1166:

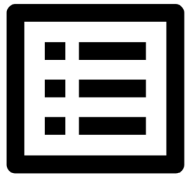
(a) Except as provided in subdivision (b), if a general verdict is rendered against the defendant, or a special verdict is given, ~~he or she must~~ they shall be remanded, if in custody, or if on bail ~~he or she~~ they shall be committed to the proper officer of the county to await the judgment of the court upon the verdict, unless, upon considering the protection of the public, the seriousness of the offense charged and proven, the previous criminal record of the defendant, the probability of the defendant failing to appear for the judgment of the court upon the verdict, and public safety, the court concludes the evidence supports its decision to allow the defendant to remain out on bail. ~~When committed, his or her bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant.~~

(b) The judicial officer shall order that a person who has been found guilty of an offense punishable by life in prison without the possibility of parole or death, and is awaiting imposition or execution of sentence, be remanded.

Pen. Code, § 1272

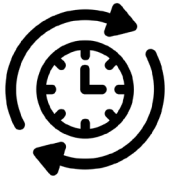
After conviction of an offense not punishable with ~~death,~~ death or life without the possibility of parole, a defendant who has made application for probation or who has appealed may be admitted to bail:

Assembly Bill 1104
Corrections and Rehabilitation: Sentencing



Makes legislative findings and declarations relating to the purpose of corrections and rehabilitation, and directs CDCR to "facilitate access for community-based programs."

Amends Pen. Code, § 1170



January 1, 2024

A.B. 1104 makes declarations regarding the purpose corrections and rehabilitation, including that the deprivation of liberty satisfies the punishment purpose of sentencing.

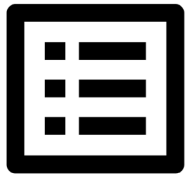
A.B. 1104 declares that community-based organization are and integral part of rehabilitation and directs CDCR to "facilitate access for community-based programs."

Pen. Code, § 136.2(a):

(1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, ~~this purpose is~~ the deprivation of liberty satisfies the punishment purpose of sentencing. The purpose of incarceration is rehabilitation and successful community reintegration achieved through education, treatment, and active participation in rehabilitative and restorative justice programs. This purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of ~~offenders~~ people incarcerated for committing the same offense under similar circumstances.

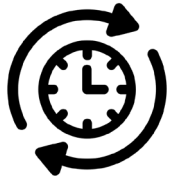
(2) The Legislature further finds and declares that programs should be available for incarcerated persons, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote ~~behavior~~ behavioral change and to prepare all ~~eligible offenders~~ incarcerated persons for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all ~~eligible offenders.~~ incarcerated persons. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all ~~eligible~~ incarcerated persons the opportunity to enroll in programs that promote successful return to the community. The Legislature finds and declares that community-based organizations are an integral part of achieving the state's objective of ensuring that all people incarcerated in a state prison have access to rehabilitative programs. The Department of Corrections and Rehabilitation is directed to ~~establish~~ maintain a mission statement consistent with these ~~principles.~~ principles and shall facilitate access for community-based programs in order to meaningfully effectuate the principles set forth in this section.

Assembly Bill 1226
Corrections: Placement of Incarcerated Persons



Requires CDCR to assign or reassign an incarcerated person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, subject to specified exceptions.

Adds Pen. Code, § 5068



January 1, 2024

Current law requires CDCR to assign a prisoner to the institution of the appropriate security level and gender population nearest the prisoner's home, unless other classification factors identified during the person's evaluation make such a placement unreasonable.

A.B. 1226 requires CDCR to assign or reassign an incarcerated person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, subject to specified exceptions.

Pen. Code, § 5068(c)(2)(A)

If the incarcerated person has a parent and child relationship with a child under 18 years of age, as described in Chapter 2 (commencing with Section 7610) of Part 3 of Division 12 of the Family Code, or is a guardian or relative caregiver as defined in Section 17550 of the Family Code, the secretary shall place the person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, provided that the placement is suitable and appropriate, would facilitate increased contact between the person and their child, and the incarcerated parent gives their consent to the placement.

CDCR must place the person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, provided that:

Placement is suitable and appropriate

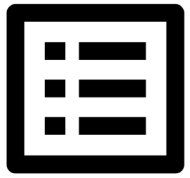
Placement would facilitate increased contact between the person and their child

The incarcerated parent gives their consent to the placement

An incarcerated person's placement may be reevaluated to determine whether existing orders and dispositions should be modified or continued in force, including, but not limited to, whether the person's child has moved to a place significantly nearer to an otherwise suitable and appropriate institution. (Pen. Code, § 5068(b)(2))

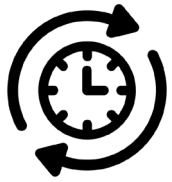
An incarcerated person may request a review of their housing assignment when there is a change in the primary place of residence of the person's child upon which the person's housing assignment was based. (Pen. Code, § 5068(c)(2)(B))

Senate Bill 852
Searches: Supervised Persons



Clarifies that, where a person is subject to search or seizure as part of their terms and conditions of probation or mandatory supervision, the person is subject to search or seizure "only by a probation officer or other peace officer."

Amends Pen. Code, § § 1170, 1203, 1203.016, 1203.017, 1203.018, and 1203.25



January 1, 2024

Current law authorizes the conditions of probation or mandatory supervision to include a waiver of the person's right to refuse searches, and requires persons released pursuant to specified provisions (e.g., home detention programs and electronic monitoring programs), to admit any person or agent designated by the correctional administrator into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the detention.

S.B. 852 clarifies that, where a person (or their residence) is subject to search or seizure as part of the conditions of their probation, mandatory supervision, home detention program, or electronic monitoring program, the person is subject to search or seizure "only by a probation officer or other peace officer."

Pen. Code, § 1170(h)(5)(b)

A defendant who is subject to search or seizure as part of the terms and conditions of mandatory supervision, is subject to search or seizure only by a probation officer or other peace officer.

Pen. Code, § 1203(m)

A person who is granted probation is subject to search or seizure as part of their terms and conditions only by a probation officer or other peace officer.

Pen. Code, § 1203.016(b)(2)

The participant shall admit any ~~person or agent~~ probation officer or other peace officer designated by the correctional administrator into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the detention.

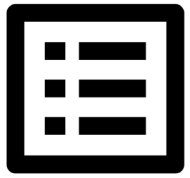
Legislative Findings:

ICE employees commonly using a "probation ruse" during home immigration enforcement operations, where they misrepresent themselves as probation officers or claim that they are conducting a probation check.

However, under existing law, ICE employees are likely not authorized to exploit probation because ICE employees are not California peace officers.

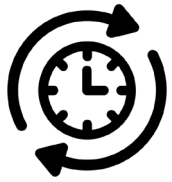
Nevertheless, California must take necessary actions to eliminate any ambiguity under existing law and make it clear that ICE employees are not peace officers and cannot conduct probation "searches and seizures."

Senate Bill 883
Public Safety Omnibus



Provide that a defendant may demur to the accusatory pleading at any time before entry of a plea where "the statutory provision alleged in the accusatory pleading is constitutionally invalid."

Amends Pen. Code, § 1004



January 1, 2024

Existing law authorizes a defendant to demur on the accusatory pleading at any time prior to the entry of a plea, when, among other things, it appears on the face of the pleading that the facts stated do not constitute a public offense or the pleading contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

S.B. 883 also authorizes a defendant to demur if the statutory provision alleged in the accusatory pleading is constitutionally invalid.

Pen. Code, § 1004(f)

The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

~~1.~~ (a) If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if any information or complaint that the court has no jurisdiction of the offense charged ~~therein;~~ therein.

~~2.~~ (b) That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or ~~information;~~ information.

~~3.~~ (c) That more than one offense is charged, except as provided in Section ~~954;~~ 954.

~~4.~~ (d) That the facts stated do not constitute a public ~~offense;~~ offense.

~~5.~~ (e) That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

(f) That the statutory provision alleged in the accusatory pleading is constitutionally invalid.

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5

Civil Commitment

A.B. 1253

S.B. 43

Assembly Bill 1253
Behavioral Health

Creates a new hearsay exception, allowing statements from a victim, eyewitness, or medical examiner regarding a sexual offense that resulted in a person's conviction that are within official reports or law enforcement records in Sexually Violent Predator (SVP) probable cause hearings (WIC 6602).

Adds Evd. Code, § 1285

January 1, 2024

Existing case law, as established in *Walker v. Superior Court* (2021) 12 Cal.5th 177, provides that there is no indication the Legislature created an explicit hearsay exception to allow hearsay, in the form of police and probation office reports, to be admitted as evidence in a SVP probable cause hearing

Under certain circumstances, A.B. 1253 allows hearsay statements from a victim, eyewitness, or medical examiner regarding a sexual offense that resulted in a person's conviction that are within official reports or law enforcement records in SVP probable cause hearings (WIC 6602)

Evd. Code, § 1285

Within an official written report or record of a law enforcement officer regarding a sexual offense that resulted in a person's conviction, the following statements are not made inadmissible by the hearsay rule at the civil hearing described in Section 6602 of the Welfare and Institutions Code when offered to prove the truth of the matter stated:

(a) A statement from a victim of the sexual offense.

(b) A statement from an eyewitness to the sexual offense.

(c) A statement from a sexual assault medical examiner who examined a victim of the sexual offense.

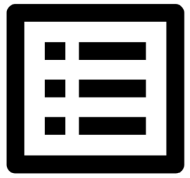
To be admissible under A.B. 1253's hearsay exception, the statements must have come from the following individuals:

A statement from a victim of the sexual offense.

A statement from an eyewitness to the sexual offense.

A statement from a sexual assault medical examiner who examined a victim of the sexual offense.

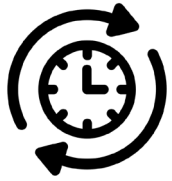
Senate Bill 43
Behavioral Health



Expands the definition of "gravely disabled" for the purposes of the LPS Act and creates an exception to the hearsay rule for LPS conservatorship proceedings.

Amends Welf. & Inst. Code § 5008

Adds Welf. & Inst. Code, § 5122



January 1, 2024 (but the bill allows counties to defer implementation of these provisions until January 1, 2026)

Under current law, "gravely disabled" is defined as a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

Expands the definition of "gravely disabled" for the purposes of the LPS Act to include "[a] condition in which a person, as a result of … a severe substance use disorder, [ ] a co-occurring mental health disorder and a severe substance use disorder, [or chronic alcoholism,] is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care."

Welf. & Inst. Code § 500(h)(1)(A)

A condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, is unable to provide for ~~his or her~~ their basic personal needs for food, clothing, ~~or shelter.~~ shelter, personal safety, or necessary medical care.

Welf. & Inst. Code § 500(h)(2)

"[G]ravely disabled" ~~means~~ includes a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for ~~his or her~~ their basic personal needs for food, clothing, ~~or shelter.~~ shelter, personal safety, or necessary medical care.

A condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a **severe substance use disorder**, is unable to provide for their basic personal needs for food, clothing, shelter, **personal safety**, or **necessary medical care**.

Severe Substance Use Disorder: a diagnosed substance-related disorder that meets the diagnostic criteria of "severe" as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. (Welf. & Inst. Code, § 5008(o).)

Personal Safety: The ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part. (Welf. & Inst. Code, § 5008(p).)

Necessary Medical Care: Care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury as defined in Wel. & Inst. Code, § 15610.67. (Welf. & Inst. Code, § 5008(q))

S.B. 43 creates a new hearsay exception in LPS conservatorship proceedings.

Under S.B. 43 statements of specified health practitioners included in the medical records upon which an expert witness's opinion is based is not hearsay under specified conditions.

Welf. & Inst. Code § 5122(a)

For purposes of an opinion offered by an expert witness in a proceeding relating to the appointment or reappointment of a conservator pursuant to Chapter 3 (commencing with Section 5350) or Chapter 5 (commencing with Section 5450), the statement of a health practitioner, as defined in subdivision (d), included in the medical record is not made inadmissible by the hearsay rule when the statement pertains to the person's symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion, if the statement is based on the observation of the declarant, and the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

When the statement pertains to the person's symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion

if

The statement is based on the observation of the declarant

and

The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

The court may grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel. (Welf. & Inst. Code, § 5112(c).)

Nothing in this section affects the application of Evidence Code section 1201. Therefore, there still needs to be a hearsay exception at every level. (Welf. & Inst. Code, § 5112(e).)