

New Legislation Webinar 2024

**New Criminal, Juvenile, and Civil Commitment Laws
From the 2024 Legislative Session**

December 10, 2024

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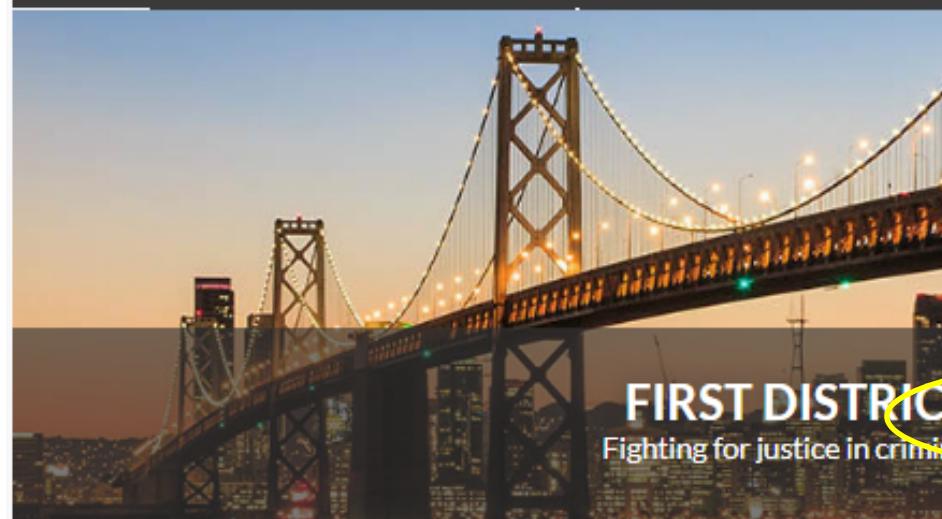


Part I: Theft, Controlled Substances, Prop 36

Part II: Restitution, Juvenile Records, AI and Child
Porn, Disorderly Conduct, Mental Health,
Firearms, Miscellaneous, and Resentencing

Part III: AB 2483

- Our goal is to provide a general overview, not a detailed analysis.
- All the bills we'll be discussing were enacted in the 2024 legislative session and will take effect Jan. 1, 2025 (unless otherwise indicated). Proposition 36 becomes effective five days after certification of the election results by the Secretary of State.
- 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. You will also find a link to the California Legislative Information website there.
- Judge Richard Couzens' memoranda on Proposition 36 is posted on CCAP's website at: <https://capcentral.org/wp-content/uploads/2024/11/PROPOSITION-36-HOMELESSNESS-DRUG-ADDICTION-AND-THEFT-REDUCTION-ACT-AND-RELATED-LEGISLATION.pdf>

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FDAP Is Hiring

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

Theft

AB 1802 & SB 982
(organized retail theft)

AB 1779
(theft jurisdiction)

AB 2943
(retail theft)

SB 1242
(arson to facilitate retail theft)

AB 1960
("excessive takings"
enhancement)

SB 1416
(sale, return, exchange of stolen
property)

Theft Bills Cont'd

AB 3209

(retail theft restraining orders)

SB 905

(theft from a vehicle)

AB 1802 (Organized Retail Theft)

- **Amends Pen. Code, § 490.4**, extending the organized retail theft offense indefinitely – i.e., removes the sunset date.
- **Repeals Pen. Code, § 13899.1**, extending the operation of the regional property crimes task force indefinitely.

SB 982 (Organized Retail Theft)

- Amends Pen. Code, § 490.4, extending the organized retail theft offense indefinitely – i.e., removes the sunset date.

AB 1779 (Theft Jurisdiction)

-Amends Pen. Code, § 786.5, adding subd. (b), broadening the expanded jurisdiction to prosecute theft, organized retail theft or receiving stolen property offenses to include charges brought by a county prosecutor, not just the Attorney General.

Provides that jurisdiction to prosecute these offenses “include[s] the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of” the offense or in abetting the parties concerned.

AB 1779 Cont'd (Theft Jurisdiction)

Also provides that “[i]f multiple offenses of [theft, organized retail theft or receiving stolen property] either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses, subject to a [consolidation] hearing pursuant to Section 954 of the matters in the jurisdiction of the proposed trial” Jurisdiction also extends to all associated offenses connected together in their commission to the underlying theft offenses.

AB 1779 Cont'd (Theft Jurisdiction)

- Requires the prosecution to present written evidence at the consolidation hearing that all district attorneys in counties with jurisdiction over the offenses agree to the venue.

AB 2943 (Retail Theft)

-AB 2943 contains six provisions relating to retail theft: (1) clarifies aggregation regarding charging multiple thefts as grand theft; (2) creates a new offense – “deprivation of a retail business opportunity”; (3) authorizes warrantless arrests for misdemeanor shoplifting under certain circumstances; (4) extends the sunset date on current nonrelease authority for arrests for repeated thefts and organized retail theft; (5) extends the sunset date on current diversion and DEJ programs for theft and repeat theft offenses; and, (6) authorizes a probation term up to two years for petty theft and shoplifting rather than a maximum of one year.

AB 2943 Cont'd (Retail Theft)

-AB 2943 amends Pen. Code, § 487, subd. (e), clarifying that distinct but related acts for purposes of aggregation of grand theft **include acts committed against multiple victims or in counties other than the county of the current offense:**

“(e) If the value of the money, labor, real property, or personal property taken exceeds nine hundred fifty dollars (\$950) over the course of distinct but related acts, *the including acts committed against multiple victims or in counties other than the county of the current offense, the* value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. *Evidence that distinct acts are motivated by one intention, one general impulse, and one plan may include, but is not limited to, evidence that the acts involve the same defendant or defendants, are substantially similar in nature, or occur within a 90-day period.”*

AB 2943 Cont'd (Retail Theft)

-Adds Pen. Code, § 496.6, creating the **new criminal offense of “deprivation of a retail business opportunity” which is punishable as a misdemeanor up to one year or as a county jail felony pursuant to Pen. Code, § 1170, subd. (h) – i.e., (wobbler).**

Subd. (a): the unlawful possession of property “acquired through one or more acts of shoplifting, theft, or burglary from a retail business,” (1) if “not possessed for personal use and the person has **intent to sell, exchange, or return the merchandise for value**, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value,” and (2) the value of the possessed property **exceeds \$950.**

AB 2943 Cont'd (Retail Theft)

--Subd. (a)(2) provides that the value of the property possessed may be considered in **aggregate** with either of the following:

- (A) “Any other such property possessed by the person with such intent within the prior two years”; or,
- (B) “Any property possessed by another person acting in concert with the first person to sell, exchange, or return the merchandise for value, when the property was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, regardless of the identity of the person committing the act of shoplifting, theft, or burglary.”

AB 2943 Cont'd (Retail Theft)

-Subd. (b) states that “[f]or the purpose of determining in any proceeding whether the defendant has the **intent to sell, exchange, or return the merchandise for value**, the trier of fact may consider any competent evidence, including but not limited to, the following:

“(1) Whether the defendant has in the prior two years sold, exchanged, or returned for value merchandise acquired through shoplifting, theft, or burglary from a retail business, or through any related offense, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant’s disposition to commit the act, as provided by subd. (b) of § 1101 of the Evidence Code.

AB 2943 Cont'd (Retail Theft)

“(2) The property involved in the offense is of a type or quantity that would **not** normally be purchased for personal use or consumption, including use or consumption by one’s immediate family.”

-**Adds subd. (f) to Pen. Code, § 836**, authorizing a peace officer to make a warrantless **arrest** of a person for **misdemeanor shoplifting** when the violation was **not committed in the officer's presence** if certain conditions are met.

Amends Pen. Code, § 1001.82, extending the sunset date and authorizing cities and counties to establish diversion and DEJ programs for theft and repeat theft crimes until January 1, 2031.

AB 2943 Cont'd (Retail Theft)

Amends Pen. Code, § 853.6, subd. (m), extending the sunset date for nonrelease arrests relating to repeat thefts and organized retail theft until January 1, 2031.

Adds Pen. Code, § 1203g, authorizing the court, **for an offense of shoplifting or petty theft, to make and enforce the terms of probation for a period not to exceed 2 years.** (Pen. Code, § 1203g, subd. (a). Also requiring a court that imposes a term that exceeds the maximum one year specified in Penal Code section 1203a, subdivision (a), to “consider referring the defendant to a collaborative court or rehabilitation program that is relevant to the underlying factor or factors that led to the commission of the offense.” (Pen. Code, § 1203g, subdivision (b).

AB 2943 Cont'd (Retail Theft)

Subd. (b) also provides that for a defendant “under 25 years of age, the court shall, to the extent such a program is available, refer the defendant to a program modeled on healing-centered, restorative, trauma-informed, and positive youth development approaches that is provided in collaboration with community-based organizations.”

Under subd. (c), “upon successful completion of the program or participation in collaboration court, the court must discharge the defendant from probation.

Under subd. (d), the program or collaborative court participation cannot “exceed the maximum period of time of probation specified in subdivision (a), except with the consent of the defendant.”

SB 1242 (Arson to Facilitate Retail Theft)

-SB 1242 amends Pen. Code, § 452, specifying that for the crime of reckless arson, the fact that the offense was “carried out within a merchant’s premises in order to facilitate organized retail theft... shall be a factor in aggravation.”
(Pen. Code, § 452, subd. (f).)

AB 1960 (“Excessive Takings” Enhancement)

AB 1960 adds Pen. Code, § 12022.6, re-enacting the “Excessive Takings” Enhancement.

Creates sentencing enhancements for taking, damaging, or destroying property in the commission or attempted commission of a felony offense or commission of felony violation of receiving stolen property (1 year for loss/property value >\$50,000; 2 years for >\$200,000; 3 years for >\$1,000,000; 4 years for >\$3,000,000; additional 1 year for each additional loss/property value of \$3,000,000).

AB 1960 Cont'd (“Excessive Takings” Enhancement)

*(b) In an accusatory pleading involving multiple charges of taking, damage, or destruction, or multiple violations of Section 496, the additional terms provided in this section may be imposed if the **aggregate** losses to the victims or aggregate property values from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section are subject to the rules of joinder and severance stated in Section 954.*

AB 1960 Cont'd (“Excessive Takings” Enhancement)

Subd. (e) includes a sunset provision:

“(e) It is the intent of the Legislature that the provisions of this section be reviewed within five years to consider the effects of inflation on the additional terms imposed. This section shall remain in effect only until January 1, 2030, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2030, deletes or extends that date.”

Notably, some of the threshold value amounts contained are lower than the values contained in Pen. Code, § 12022.6 when the law was allowed to sunset in 2018. According to the Senate Floor analysis prepared on July 2, 2024, the repealed statute was last adjusted for inflation in 2007. **SEE ALSO PROP 36**

SB 1416 (Sale, Return, Exchange of Stolen Property)

SB 1416 adds Pen. Code, § 12022.10, creating **new sentencing enhancements** of 1, 2, 3, or 4 years respectively for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds \$50,000, \$200,000, \$1,000,000, or \$3,000,000. (Pen. Code, § 12022.10, subd. (a)(1)-(4).)

In addition to these terms, for each property value of \$3 million, the court must impose an additional one-year term.
(Pen. Code, § 12022.10, subd. (a)(5).)

SB 1416 Cont'd (Sale, Return, Exchange of Stolen Property)

Makes these enhancements applicable to any person acting in concert with another person. (Pen. Code, § 12022.10, subd. (b).)

Authorizes **aggregation** of “multiple charges of sales, exchanges, or returns for value, or attempts to do the same” so that the enhancements in this section “may be imposed when the aggregate value of the property involved exceeds the amounts specified in this section and arises **from a common scheme or plan**. All pleadings under this section are subject to the rules of joinder and severance stated in Section 951.” (Pen. Code § 12022.10, subd. (c).)

SB 1416 Cont'd (Sale, Return, Exchange of Stolen Property)

"(f) It is the intent of the Legislature that the provisions of this section be reviewed within five years to consider the effects of inflation on the additional terms imposed. For that reason, this section shall remain in effect only until January 1, 2030, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2030, deletes or extends that date."

AB 3209 (Retail Theft Restraining Orders)

AB 3209 adds Pen. Code, § 490.8, authorizing a court sentencing a defendant for shoplifting, theft from a retail establishment, organized retail theft, vandalism of a retail establishment, or assault or battery of an employee of a retail establishment, to issue a **criminal protective order prohibiting the person from entering the retail establishment for up to two years**.

Allows a prosecutor, city attorney, county counsel, or retail establishment's attorney to file a petition for a restraining order against an individual who has been arrested twice for any of the crimes listed above at the same retail establishment.

SB 905 (Theft from a Vehicle)

SB 905 adds Pen. Code, § 465, creating a new alternate county jail felony-misdemeanor (wobbler) for **forcibly entering a vehicle with the intent to commit a theft** or any felony therein.

"(c) As used in this section, forcible entry of a vehicle means the entry of a vehicle accomplished through any of the following means: the use of a tool or device that manipulates the locking mechanism, including, without limitation, a slim jim or other lockout tool, a shaved key, jiggler key, or lock pick, or an electronic device such as a signal extender, or force that damages the exterior of the vehicle, including, but not limited to, breaking a window, cutting a convertible top, punching a lock, or prying open a door."

SB 905 Cont'd (Theft from a Vehicle)

Also adds Pen. Code, § 496.5, creating a new alternate county jail felony-misdemeanor (wobbler) for the crime of **“automotive property theft for resale.”** Applies to property “acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code” if: (1) the “property is not possessed for personal use and the person has the intent to sell or exchange the property for value, or the intent to act in concert with one or more persons to sell or exchange the property for value”; and (2) the “value of the property exceeds \$950.”

Allows **aggregation** of the value with (A) “[a]ny other such property possessed by the person with such intent within the last two years.

SB 905 Cont'd (Theft from a Vehicle)

(B) Any property possessed by another person acting in concert with the first person to sell or exchange the property for value, when that property was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code, regardless of the identity of the person committing the acts of theft, burglary, or vehicle tampering.”

SB 905 Cont'd (Theft from a Vehicle)

Also provides that for the purpose of **determining intent to sell or exchange the property for value**, the jury **may consider** any competent evidence, including, but not limited to, the

“(b)(1) Whether the defendant has in the past two years sold or exchanged for value any property acquired through the theft from a vehicle, burglary of a locked vehicle, or vehicle tampering[], or through any related offenses, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant’s disposition to commit the act as provided by subdivision (b) of Section 1101 of the Evidence Code.

(2) Whether the property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one’s immediate family.”

Controlled Substances (3 Bills)

AB 2018

(controlled substances)

AB 2106

(probation; controlled substances)

AB 2136

(controlled substances; analyzing and testing)

AB 2018 (controlled substances)

AB 2018 amends Health & Saf. Code, § 11057
to remove fenfluramine from the list of Schedule IV controlled substances under the California Uniform Controlled Substances Act and amends § 11375 to remove it from the list of controlled substances that are a crime to possess or sell.

AB 2106 (probation; controlled substances)

AB 2106 adds Pen. Code, § 1203.044, requiring, “where a defendant is charged with a controlled substances offense and granted probation, the court [to] order a drug treatment program or drug education pursuant to Section 11373 of the Health and Safety Code” if the probation officer has identified an appropriate program with capacity to accept the defendant. **The court may revoke probation and impose a new grant of probation if the defendant willfully fails to comply with the program.** A sliding fee scale for the program will be used based on the person’s ability to pay.

AB 2136 (controlled substances; analyzing and testing)

AB 2136 amends Health & Saf. Code, §§ 11014.5, 11364, 11364.5, and 11364; and adds Sections 11300, 11301, 11302, 11303, 11304, 11305, and 11306, authorizing controlled substance checking services and providing immunity from criminal prosecution and civil liability to a person engaged in providing or using those services.

Proposition 36 (The Homelessness, Drug Addiction, and Theft Reduction Act)

**Health & Saf. Code, § 11369
(Alexandra's Law)**

**Health & Saf. Code, § 11370.1
(armed possession: fentanyl)**

**Health & Saf. Code, § 11370.4
(weight enhancements: fentanyl)**

**Health & Saf. Code, § 11395
(Treatment-Mandated Felony Act)**

**Pen. Code, § 12022
(controlled substance:
offense while armed with
a firearm enhancement)**

**Pen. Code, § 12022.7
(controlled substance:
(GBI)**

Proposition 36 Cont'd (The Homelessness, Drug Addiction, and Theft Reduction Act)

Pen. Code, § 490.3
(theft: aggregation)

Govt. Code, § 7599.200
(Funding for the Homelessness, Drug Addiction, and Theft Reduction Act)

Pen. Code, § 666.1
(petty theft or shoplifting w/
prior theft convictions)

Pen. Code, § 12022.6
(See AB 1960: great takings enhancement)

Pen. Code, § 12022.65
(acting in concert to steal or damage: enhancement)

Prop. 36 – Health & Saf. Code, § 11369 (Alexandra’s Law)

Adds Health & Safety Code, § 11369, Alexandra’s law, requiring a *Watson*-type advisement for persons convicted of a violation of Health & Saf. Code, § 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 involving a “hard drug.”

Requires the court to advise the person that **if their conduct** in illicitly manufacturing, distributing, selling, furnishing, administering, or giving away any real or counterfeit drugs or pills **results in the death** of a human being, they can be **charged with homicide**, up to and including murder.

Prop. 36 – Health & Saf. Code, § 11369 (Alexandra's Law) Cont'd

"(d) (1) Except as provided in paragraph (2), as used in this section, "hard drug" means a substance listed in Sections 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section "hard drug" does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD) or other psychedelic drugs such as mescaline and psilocybin (mushrooms), or any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055."

Prop. 36 – Health & Saf. Code, § 11370.1 (armed possession: fentanyl)

Amends Health & Saf. Code, § 11370.1, adding a substance containing fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable by two, three, or four years in state prison.

Prop. 36 – Health & Saf. Code, § 11370.4 (weight enhancements: fentanyl)

Amends Health & Saf. Code, § 11370.4, specifying that weight enhancements under this section are to be served in **state prison**. Also **restructures and increases the weight enhancements punishment** for a person convicted of a violation of, or conspiracy to violate, § 11351 or 11352 with respect to a substance containing **fentanyl**.

Removes the language added by AB 701 (Chapter 540, Statutes of 2023) that the person knew of the substance's nature or character as a controlled substance.

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act)

Adds Health & Saf. Code, § 11395, creating the “Treatment-Mandated Felony Act” which makes unlawful possession of a “hard drug” punishable as a misdemeanor or county jail felony if the person has two or more prior misdemeanor or felony drug convictions, as specified. A second or subsequent conviction under this section is punishable as a misdemeanor or state prison felony.

There is **no** “washout” period.

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act) Cont'd

Provides that a “person shall not be sentenced to jail or prison under this section unless a court determines that the person is not eligible for or suitable for treatment” or that other specified circumstances apply to the person.

In lieu of jail or prison, the person may elect diversion
– i.e., completion of a treatment program developed by the drug addiction expert and approved by the court.

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act) Cont'd & Govt, Code, § 7599.20

“[T]he court shall order a drug addiction expert to conduct a substance abuse and mental health evaluation of the defendant.”

“[T]he court shall also order that a case worker or other qualified individual determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits for any programs or evaluations under this section.”

Adds Govt. Code, § 7599.200 (Funding for the Homelessness, Drug Addiction, and Theft Reduction Act).

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act) Cont'd

Upon **successful completion** of the treatment program, the positive recommendation of the treatment program, and the motion of the defendant, prosecuting attorney, the court, or the probation department, the court shall **dismiss the charge** and the provisions of Pen Code, § 1000.4, as it read on the effective date of this section, shall apply, including that the **arrest shall be deemed never to have occurred**.

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act) Cont'd

If at any time it appears that the defendant is **performing unsatisfactorily**, is **not benefitting** from treatment, is **not amenable** to treatment, has **refused treatment** or has been **convicted of a crime** that was committed **since starting** treatment, the prosecutor, the court on its own, or the probation department may make a motion for entry of judgment and sentencing. Notice and a hearing is required.

Prop. 36 – Health & Saf. Code, § 11395 (Treatment-Mandated Felony Act) Cont'd

Referral is possible in the interests of justice if the defendant is amenable to treatment, **unless** they have been convicted of a crime that was committed since starting treatment.

Actual credits (Pen. Code, § 2900.5) may be earned for time in treatment but **not conduct credits** (Pen. Code, § 4019).

Prop. 36 – Pen. Code, § 12022 (controlled substance offense while armed with a firearm enhancement)

Amends Pen. Code, § 12022, subd. (c), requiring the enhancement for being personally armed with a firearm during specified drug offenses **to be served in state prison instead of the county jail** under Pen. Code, § 1170, subd. (h).

“(c)(2) Notwithstanding paragraph (9) of subdivision (h) of Section 1170 of the Penal Code, a defendant convicted of an underlying violation specified in this subdivision who admits an enhancement pursuant to this subdivision or for whom an enhancement pursuant to this subdivision is found true, is punishable by imprisonment in the state prison and not pursuant to subdivision (h) of Section 1170 of the Penal Code.”

Prop. 36 -- Pen. Code, § 12022.7 (controlled substance: GBI)

Amends Pen. Code, § 12022.7, subd. (f), adding:

“(f)(2) As used in this section, a person who sells, furnishes, administers, or gives away a controlled substance is deemed to have personally inflicted great bodily injury when the person to whom the substance was sold, furnished, administered, or given suffers a significant or substantial physical injury from using the substance.”

Prop. 36 – Pen. Code, § 490.3 (theft: aggregation)

Adds Pen. Code, § 490.3, providing that notwithstanding any other law, in a case involving one or more acts of theft or shoplifting, as specified, the value of property or merchandise stolen may be **aggregated** into a single count or charge, with the sum of the value of all property or merchandise being the value considered in determining the degree of theft.

Expands the *Bailey* rule regarding aggregation of theft acts, authorizing aggregation irrespective of whether the multiple thefts were committed pursuant to a single intention, impulse, and plan. (See *People v. Bailey* (1961) 55 Cal.2d 514, 518-519.)

Prop. 36 – Pen. Code, § 666.1 (petty theft or shoplifting w/ prior theft convictions)

Adds Pen. Code, § 666.1, increasing the punishment for a person convicted of petty theft or shoplifting if the person has two or more specified prior theft convictions. A first conviction under this section is punishable as a misdemeanor or county jail felony (wobbler). A second or subsequent conviction under this section is punishable as a misdemeanor or state prison felony (wobbler).

Prop. 36 – Pen. Code, § 666.1 (petty theft or shoplifting w/ prior theft convictions) Cont'd

Applies to the following prior convictions, including those that occurred before the effective date of this section: petty theft; shoplifting, grand theft; theft from an elder or dependent adult; theft or unauthorized use of a vehicle; burglary, carjacking, robbery; receiving stolen property, and identity theft or mail theft.

Prop. 36 – Pen. Code, § 666.1 (petty theft or shoplifting w/ prior theft convictions) Cont'd

Authorizes the prosecution or probation to refer a person charged under this section or subject to charging under this section to **theft diversion or deferred entry of judgment (DEJ)** pursuant to Pen. Code, § 1001.81 and if appropriate, refer them to a substance abuse treatment program.

Requires **judicial review prior to release following arrest**. Court must make an individualized determination of risk to public safety and likelihood of return to court.

Prop. 36 – Pen. Code, § 12022.6 (“great takings enhancement”)

Adds Pen. Code, § 12022.6, the “great takings enhancement.”

Largely the same as AB 1960, but there is no sunset (with the intent to review for inflation).

Prop. 36 – Pen. Code, § 12022.65 (acting in concert to steal or damage: enhancement)

Adds Pen. Code, § 12022.65, creating a new enhancement, punishable by an additional and consecutive term of imprisonment of one, two, or three years, for any person who acts in concert with two or more persons to steal or damage any property in the commission or attempted commission of a felony.

Part I: Theft, Controlled Substances, Prop 36

Part II: Restitution, Juvenile Records, AI and Child
Porn, Disorderly Conduct, Mental Health,
Firearms, Miscellaneous, and Resentencing

Part III: AB 2483

AB 1186 – Restitution Fines and 602 Victim Restitution

Summary

- Vacates the balance of remaining restitution fines/collections fees for adult defendants and 602 minors after 10 years
- Eliminates restitution fines stemming from WIC 602 proceedings
- Clarifies the amount of restitution owed by a minor in cases of stolen or damaged property
- Removes joint and several liability for victim restitution in WIC 602 cases

AB 1186 (cont'd) – Restitution Fines After 10 Years

- Amends PC 1465.9, 2085.5, 2085.6, and 2085.7; WIC 223.2 and 730.6. Repeals WIC 1752.81 and 1752.82
- PC 1565.9(d) – adult restitution
 - The **balance of PC 1202.4 restitution fines**, including collection fees, **is unenforceable and uncollectable after 10 years** and portion of judgment imposing fines shall be **vacated**
 - Issue: does this apply to victim restitution? No
 - PC 1202.4(a)(1)(3) distinguishes between victim restitution and restitution fine
 - See also PC 2085.6(g), 2085.7(g): “Restitution fine” means fine imposed per GC 13967(a) pre-9/29/94, WIC 730.6(b) pre-1/1/25, or PC 1202.4(b). “Restitution order” means victim restitution imposed per GC 13967(c) pre-9/29/94, WIC 730.6(b) post-1/1/25, or PC 1202.4(f)
- WIC 223.2(d) – juvenile delinquency restitution
 - The **balance of any WIC 730.6 restitution fine**, including collection fees, **is vacated, unenforceable, and uncollectable after 10 years**
 - Likely refers to pre-1/1/25 restitution fine, not post-1/1/25 victim restitution

AB 1186 (cont'd) – Restitution Fines After 10 Years

- Next steps for clients with 10+ year old fines?
- Takeaway: If have an affected pending appeal (like a resentencing case), can ask the COA to vacate the balance of the fines. Otherwise, you don't need to take any action.
- Similar question arose when AB 1869 vacated a bunch of fees in 2021
 - *People v. Lopez-Vinck* (2021) 68 Cal.App.5th 945, 953, fn. 8
 - Clients with final sentences don't need to seek vacatur of any unpaid fees
 - If client has pending appeal, he/she can request vacatur of remaining fees and is entitled to have those vacated
 - *People v. Greeley* (2021) 70 Cal.App.5th 609, 626
 - The plain language of AB 1869, which said the fees “shall be vacated,” authorized the court to strike the fees from the judgment
 - AG had argued that the fees need not be stricken by the COA because they would automatically become uncollectible on the effective date of the statute

AB 1186 (cont'd) – No 602 Restitution Fines & Victim Restitution Several Liability

- **WIC 730.6**
 - (a)(2) The court **shall not impose a restitution fine against a 602 minor**
 - Does not apply to victim restitution and any other WIC 730.5 fine
 - Note: (f) still says the court shall require “payment of restitution fine” as a condition of probation → oversight?
 - Note: Legislative history makes clear that elimination of 602 restitution fine **applies prospectively**
 - See Assembly Floor Analysis (8/27/24), Senate Public Safety (6/26/24)
 - (b)(1)(A) restitution for the value of stolen or damaged property shall be the replacement cost of like property or the actual cost of repairing the property, **whichever is less**

AB 1186 (cont'd) – No 602 Restitution Fines & Victim Restitution Several Liability

- WIC 730.6 (cont'd)
 - (b)(3) for the purpose of victim restitution, “**each minor shall be held severally liable, and shall not be held jointly and severally liable as co-offenders.**” Liability must be apportioned based on percentage of each minor’s responsibility or fault for economic losses, and the aggregate amount may not exceed 100%
 - Note: Legislative history makes clear that several liability **applies prospectively**
 - (f) Any remaining portion of restitution order continues to be enforceable by victim until satisfied in full **or is vacated and unenforceable and uncollectable**
 - Room to argue that victim restitution is subject to the 10-year expiration date of WIC 223.2(d)? Does “vacated” solely refer to the rare court order where victim restitution no longer appropriate, or also to the new 10-year expiration date?

AB 1186 (cont'd) – Repealed Restitution Laws

- **Repealed WIC 1752.81 and 1752.82**, which outlined rules for the possession and use of trust funds of a ward committed to DJJ, including payment of restitution orders and restitution fines (DJJ closed in 2023)

AB 2432 – Corporate Restitution and Fines

- Amends PC 1202.24; adds PC 1398
- **PC 1202.4**
 - Adds (r) - where defendant is a corporation, requires separate and additional restitution fine (absent compelling and extraordinary reason not to) commensurate with seriousness of offense
 - Max \$100,000 for felonies, \$1,000 for misdemeanors
- **PC 1398**
 - (a) where a corporation is convicted of a crime, the court *may* order it to pay an additional fine: “the corporate white collar criminal enhancement”
 - (b) the court determines the amount, which shall not exceed the greater of either (1) two times the value of the taking or loss, whichever is greater, if the offense resulted in taking money, labor, or property; or, (2) \$25 million
 - (c) lists mandatory considerations when determining the fine
 - (d) if the court imposes the fine, it must state the reason on the record

AB 1877 and SB 1161 – Sealing Juvenile Records

Summary

- **AB 1877**
 - Purpose: streamline, simplify, and reduce costs of sealing juvenile record
- **SB 1161**
 - Purpose: WIC is outdated re: technological advances and process changes that negatively impact youth. Trying to streamline access and sealing opportunities for eligible youth in the juvenile justice system

AB 1877 – Sealing Juvenile Records

- **Adds WIC 781.2 and 788; amends WIC 786.5, 787, and 827.95**
- **WIC 781.2**
 - Every month, the DOJ must identify arrests that are eligible to be sealed. DOJ must give the resulting list to all agencies associated with that arrest.
 - Those agencies must review the provided list monthly and respond to the DOJ within 6 months with a list of records that shall be sealed.
 - The DOJ must seal the arrests within 90 days
- **WIC 786.5** (first introduced in SB 1161, incorporated by AB 1877 as last in time)
 - Adds (g) – if prosecutor doesn't initiate proceedings within SOL, then probation, DOJ, and law enforcement must seal the citation, arrest, and other records
 - Adds (h) – probation shall seal records if probation deems it unnecessary to refer juvenile to diversion or supervision, or elects to counsel juvenile and take no action
 - Adds citation records for misdemeanors and adds arrest and citation records for a felony among those that must be sealed under specified conditions

AB 1877 (cont'd) – Sealing Juvenile Records

- **WIC 788**
 - (a) notwithstanding WIC 781 or PC 1203.4, if a 601 or 602 petition is filed, once the person turns 18, the probation officer must either:
 - (1) petition to seal the records if the person will not remain under the court's delinquency jx; or,
 - (2) petition to seal the records no later than one year after termination of the court's delinquency jx if the person will remain under the court's delinquency jx
 - (b) lists circumstances where the record shall not be sealed
 - (c) court shall seal records if the person hasn't been convicted of a felony or misdo involving moral turp after juvi jx was terminated. Defense counsel shall not be ordered to seal their records.
 - (d) if sealed, the proceedings "shall be deemed never to have occurred and the person may properly reply accordingly to any inquiry about the events"
 - (e) if probation doesn't file a petition, the officer must notify, in writing, the person and defense counsel re: the reason

AB 1877 (cont'd) – Sealing Juvenile Records

- WIC 788 (cont'd)
 - (f) lists circumstances under which the sealed records may be accessed
 - (C)(i) – **prosecutor may access sealed records** via request to juvi court “in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case” **if prosecutor has reason to believe access is necessary to meet the disclosure obligation**. A court ruling allowing disclosure does not affect admissibility of the information in a criminal or or juvenile proceeding.
 - (C)(ii) – “This subparagraph does not impose any additional discovery obligations” on prosecutor
 - (h)(1) this section does not apply to certain DMV records
 - (i) a sealing petition shall not be denied due to unpaid restitution or restitution fine
 - (j) a court can still enforce a civil judgment for unpaid restitution
 - (k) prosecutor must be given 15 days notice before court grants sealing petition
 - (l) court must destroy sealed juvenile court records absent good cause to retain them
 - (1) 5 years after record ordered sealed if adjudged under 601
 - (2) if adjudged under 602, once the person turns 38 years old
 - (3) the court must order any other agency in possession of sealed records to destroy them 5 years after they were ordered sealed

SB 1161 – (More) Sealing Juvenile Records

- Amends **PC 851.7; WIC 303, 388, 450, 451, 604, 654.2, 781, 786.5, 800, 827**
- **PC 851.7(a)**
 - Expands language to include minors who received citations or were arrested for felonies
- **WIC 604(e)**
 - If minor's case was certified to juvi court and has their records sealed, the juvi court shall also order all criminal court records associated with that juvi record sealed
- **WIC 654.2(c)**
 - Provides equal consideration for informal probation per WIC 654.3 regardless of whether the minor lives in the county where the offense occurred

SB 1161 (cont'd) – (More) Sealing Juvenile Records

- **WIC 781(a)(1)(A) and 786(a)**
 - **The court can't order minor's counsel to seal own records**
 - Legislative reasoning: defense attorneys have an obligation to maintain and preserve client files, and someone with a juvi record may reach out years later re: their juvi record
- **WIC 781(a)(1)(G)**
 - Minor may seal records involving moral turpitude if they have been dismissed, vacated, or reduced to non-moral turpitude misdemeanors

SB 1161 (cont'd) – Appellate Proceedings and Juvenile Records

- **WIC 800(g)**
 - The jurisdiction of the appellate court is not affected by a juvenile record sealing pursuant to WIC 781 or 786
 - If the appellate court remands matter to juvi court after jurisdiction terminated or the record is sealed, **the juvenile court must access its records and assume jurisdiction to the extent necessary to follow the directions of the appellate court**
 - If the matter is returned to juvi court after jurisdiction is transferred to another county, the matter shall return to the juvi court that last exercised jurisdiction

SB 1161 (cont'd) – Attorney Access to Juvenile Records

- **WIC 827**
 - Adds (V) to (a)(1)'s list of persons who may inspect case file; **now includes “attorney representing a person who is, or was, subject to juvenile proceedings under Section 601 or 602”**
 - Purpose: to give attorneys representing adults in resentencing, habeas, and parole suitability proceedings the ability to inspect and copy a client's juvenile file without a court order
 - (e) clarifies that “juvenile case file” includes any writing per EC 250 or **electronically stored information** relating to the minor
 - Purpose: some attorneys had difficulty obtaining electronically/digitally stored records because the entities that possess those records adopt a narrow definition of “document” that only includes written information

SB 1353 – Youth Bill of Rights

- **Amends WIC 224.71**
- Adds to the Youth Bill of Rights the right to receive adequate, appropriate, and timely behavioral health services, as specified.

AB 1831, SB 1381, SB 1414, AB 1892

Child Porn, Disorderly Conduct, AI, Oh My!

Summary

- **AB 1831**
 - Prohibits possessing and distributing material that contains digitally altered or AI-generated depiction of a minor
- **SB 1381**
 - Prohibits use of AI to create images of real minors engaged in sexual conduct
 - Prohibits use of minors as models for digitally altered or AI-generated child porn
- **SB 1414**
 - Expands definition of disorderly conduct to include distribution of images of intimate body parts or sexual acts that cause serious emotional distress
 - Increases punishment for solicitation of a minor under 16 or minor under 18 who is a victim of human trafficking
 - Requires sex offender registration for PC 647(l)(2) if defendant was 10 years older than solicited minor and has a prior conviction for solicitation of a minor
- **AB 1892**
 - Authorizes wire tap if probable cause of felony violation of PC 311.2(b) or (d), or PC 311.4(b) or (c)

AB 1831 – AI and Child Porn

- Amends PC 311, 311.2, 311.11, and 311.12
- PC 311
 - (b) adds definition of “artificial intelligence” for the purposes of Title 9, Chapter 7.5 regarding obscene matter
- PC 311.2
 - (b) prohibits knowingly sending/possessing, with intent to distribute for commercial consideration, obscene matter depicting minor engaging in/personally simulating sexual conduct **or containing digitally altered or AI-generated depiction of *what appears to be* a minor**
 - Adds (c)(2) DA **doesn't need to prove commercial consideration**
 - Adds (c)(3) if the matter depicts a real minor, the DA doesn't need to prove the matter is obscene or that it lacks serious literary, artistic, political, or scientific value

AB 1831 (cont'd) – AI and Child Porn

- **PC 311.11**
 - (a)(1) expands crime of possession of child porn produced by using a real minor to include matter using real minor that is digitally altered or AI-generated
 - (d) says (a)(1) doesn't apply to drawings, figurines, or statues
 - E.g., splicing image of real minor's head onto AI-generated porn
 - (a)(2) adds new felony for possession of computer-generated, digitally altered, or AI-generated child porn that depicts what *appears* to be a minor
 - Punishable by fine and/or prison or jail

SB 1381– AI and Child Porn

- **Amends PC 311.1, 311.3, 311.4, and 312.3**
- **PC 311.1**
 - (a) adds digitally altered or AI-generated matter to the list of prohibited data/images/etc. for the crime of sending/bringing into this state or possessing for sale/distribution obscene matter showing a *real* minor or what *appears to be* a minor engaging in/simulating sexual conduct
- **PC 311.3**
 - (a) adds digitally altered or AI-generated matter to the list of prohibited data/images developed/exchanged showing minor engaged in sexual conduct for the crime of sexual exploitation of a child
 - Adds (b) to clarify that the prosecution doesn't need to prove that the matter is obscene

SB 1381 (cont'd) – AI and Child Porn

- **PC 311.4**
 - (b) and (c) add digitally altered or AI-generated matter to list of prohibited data/images involving employment or use of minor to perform sexual acts posing/modeling for commercial purposes

SB 1414 – Distribution of Real Intimate Images (Disorderly Conduct)

- Double jointed with SB 926, AB 1874, and AB 1962 (SB 1414 chaptered last)
- Amends PC 647 and PC 290
- **Amends PC 647**
 - (j)(4)(A)(i) amended to include more specific list of required elements for type of misdemeanor disorderly conduct that involves distribution of **real** images of intimate body parts or sex act:
 - (I) the defendant knows it will cause serious emotional distress; and,
 - (2) the person depicted suffered serious emotional distress; and, either
 - (III)(ia) the person depicted agreed or believed the image would remain private; or,
 - (III)(ib) the image was obtained without authorization of person depicted and person had reasonable expectation of privacy; or,
 - (III)(ic) the image was knowingly obtained by the distributing person by accessing the property or accounts in an unauthorized manner

SB 1414 (cont'd) – More Disorderly Conduct

- **Amends PC 647 (cont'd)**
 - Adds (j)(4)(A)(ii)
 - Misdemeanor to create/distribute **fake yet realistic images** of intimate body parts or purported sexual acts that caused serious emotional distress
 - Does not apply to offenders who were minors
 - Adds (j)(6)
 - PC 654 prohibits multiple punishments for violation of (j)(2) and (j)(4) or PC 502
 - Adds (k)(3) to increase punishment to wobbler for 2nd/subsequent offenses if victim of (j)(3) crime (secret recording/photos while undressed) was a minor
 - Does not apply to offenders who were minors

SB 1414 (cont'd) – Solicitation of a Minor

- **Amends PC 647 (cont'd)**
 - Amends (l)(1)
 - Clarifies that the misdemeanor solicitation of minor offenses listed in (b) only applies to defendants 18 years or older
 - Adds (l)(2) to increase punishment when victim is under 16 or under 18 and a human trafficking victim (no longer misdemeanor)
 - 1st offense is a wobbler
 - 2nd/subsequent offenses are PC 1170(h) felonies

SB 1414 (cont'd) – Sex Offender Registration

- **Amends PC 290 to add (c)(2)(A)**
 - Must register as a sex offender if all the following are true:
 - 18 years or older
 - Convicted on or after January 1, 2025 for violating PC 647(l)(2) (soliciting minor under 16 or under 18 and a human trafficking victim)
 - Has a prior PC 647(l)(2)(A) conviction
 - Defendant was more than 10 years older than the solicited minor
 - Does not preclude requirement to register pursuant to PC 290.006

AB 1892 –Child Porn Wire Tap

- **Amends PC 629.52** to authorize a court to issue an ex parte order authorizing interception of wire or electronic communications if the judge finds there is probable cause to believe a person is committing, has committed, or is about to commit a felony violation of PC 311.2(b) or (d) or PC 311.4(b) or (c) relating to the distribution of obscene matter depicting a person under 18 years of age

SB 1025 – Veteran Diversion & MH/Firearms

Summary

- **PC 1001.80**
 - Expands eligibility for the military diversion program to felonies, with specified exceptions
- **WIC 8103**
 - Requires relinquishment of firearms, ammunition, and deadly weapons within 14 days of a court order finding the person has a specified mental health-related status, 72 hours if person release from 5150 hold
- **Also: SB 899**
 - Permits search warrant to seize ammo from persons subject to WIC 8103

SB 1025 – Veteran Pretrial Diversion

- Amends PC 1001.80 and WIC 8103
- Double jointed with SB 1002 and AB 2629 (SB 1025 was chaptered last)

PC 1001.80

- (a), (c) add eligible felonies to the pretrial diversion program for a defendant who is or was a member of the U.S. military, may be suffering from a specified condition resulting from service, and **the condition was a significant factor in commission of the offense**
- (c)(2)(B) for felonies, **court must find the defendant's condition was a significant factor in commission of the offense unless there is clear and convincing evidence otherwise**
 - Presumption that condition was a significant factor

SB 1025 (cont'd) – Veteran Pretrial Diversion

PC 1001.80 (cont'd)

- (c)(2)(C) court can consider **any relevant/credible evidence** that defendant had symptoms at or near in time to the offense, including police report, prelim transcript, witness statements, defendant's statements to treatment provider, medical records, medical expert report
- (c)(2)(D) court may request an assessment to aid in deciding whether defendant qualifies for pretrial diversion

SB 1025 (cont'd) – Veteran Pretrial Diversion

PC 1001.80 (cont'd)

- (n)(2) **precludes pretrial diversion for DUI-related offenses** except for misdemeanor VC 23152 or 23153
- (o) **precludes pretrial diversion for a list of offenses**
 - Exceptions: murder, voluntary manslaughter, 290 offense, rape, lewd/lascivious acts on child under 14, assault with intent to commit rape/sodomy/oral cop, rape or sexual penetration in concert, continuous sexual abuse of child, use of weapons of mass destruction
- (p) authorizes prosecution to request an order prohibiting defendant in diversion from having a firearm because they are a danger to themselves or others until they successfully complete diversion or their firearms rights are restored

SB 1025 (cont'd) – Mental Health and Firearms

WIC 8103

- Mandates firearms, deadly weapons, and ammunition relinquishment within 14 days of court order when the defendant is found to be:
 - A danger to others as a result of mental disorder or mental illness
 - A mentally disordered sex offender
 - Not guilty by reason of insanity for specified crimes
 - Incompetent to stand trial
 - Under LPS conservatorship per WIC 5350
- If person taken into custody per WIC 5150, must relinquish within 72 hours of discharge and 5-year prohibition following release
 - Facility must inform person of 72-hour relinquishment requirement
- Adds new prohibition against possessing ammo

SB 899 – Search Warrant to Seize Ammo

- **Amends PC 1524** (among other statutes)
 - Double-jointed with SB 1002 for amendments to this section (SB 899 chaptered last)
- Adds (a)(21) a **search warrant to seize ammunition** may be issued if:
 - (A) the ammunition is owned/possessed/in custody of a person subject to WIC 8103 firearms prohibitions (the mental health/firearms statute discussed in a previous slide)
 - (B) the person was lawfully served with order required by WIC 8103
 - (C) the person has failed to relinquished the ammunition

AB 2475 – Delayed Release If Not An OMHD

- **Amends PC 2966**
- Amends (b) to requires court to stay the execution of a decision determining an incarcerated person is not a PC 2962 offender with a mental health disorder (OMHD/formerly MDO) for **up to 30 days** (previously 5 days) in order to allow for the person's orderly release
 - The court may require the parties to return to court during those 30 days to ensure that the entities involved have coordinated an exit plan
 - BPH/CDCR must notify the probation department of the supervising county of the pending release within 5 working days of the court order and work with the county to coordinate the orderly and safe release
- Purpose: increase the mental health treatment planning window to give DSH, Parole, and local agencies time to coordinate housing, supervision, and mental health services

AB 1954 – SVP Housing

- **Amends WIC 6608.5 and 6609.1**
- Requires sheriff/police chief, county counsel, and DA in alternative placement county to provide assistance and consultation in the DSH process of locating and securing housing for a conditionally released sexually violent predator and to provide appropriate contact information

SB 1317 – Involuntary Medication

- **Amends PC 2603**
- Extends the sunset provision to January 1, 2030 for law authorizing involuntary psychotropic medication of county jail inmates who are awaiting arraignment, trial, or sentencing
- (b) adds that “[a]ny such treatment shall be consistent with the standard of care”
- (c)(5) clarifies that the county may submit a declaration under penalty of perjury to demonstrate a documented attempt to locate an available bed
- (c)(5) clarifies that the jail must attempt to locate a treatment facility that is “noncarceral”

AB 2308, AB 2907, AB 2917, and SB 902

Goodbye Guns, Hello Protective Orders

Summary

- **AB 2308**
 - Court may modify/terminate protective order with 15 days notice
- **AB 2907**
 - Shortens firearm surrender deadlines for criminal protective orders
- **AB 2917**
 - Court may consider certain evidence when considering whether to grant a gun violence restraining order
- **SB 902**
 - Prohibits firearm access for 10 years to those convicted of misdemeanor violation of animal cruelty

AB 2308 – Protective Order Petitions

- **Amends PC 273.5**
 - If the prosecutor, defendant, or victim files a petition to modify or terminate a protective order for good cause and all three are given 15 days notice before the hearing, the court may grant it

AB 2907 – Protective Order Firearm Surrender Deadlines and Procedures

- Amends PC 136.2, 273.5, 273.75, 368, 646.9, 1203.097, and 29825; adds PC 273.76 and 29825.5
- Conforms firearm surrender deadlines for criminal protective orders in DV cases to the shorter firearm surrender period for civil protective orders
- Establishes additional steps that courts and police must take to ensure a person subject to a protective order relinquishes any firearms

AB 902 – New Crime for Gun Possession

- **Amends PC 29805** to add (g)
- Adds new misdemeanor crime for any person who was convicted of animal cruelty (PC 597(a)) on or after January 1, 2025 and who, within 10 years of that conviction, owns, purchases, receives, or has in possession/custody/control any firearm

Miscellaneous Bills

New Violent Felony

- **SB 268**
 - **Amends PC 667.5** to add (c)(24) to the list of violent felonies: rape of an intoxicated person wherein the defendant drugged the victim with the intent to sexually assault

New Sexual Battery Crime

- **SB 442**
 - **Amends PC 243.4(e)(1)** to make it a misdemeanor for a person who, for the purpose of sexual arousal, gratification, or abuse, causes another, against that person's will, to masturbate or touch an intimate part of either of those persons or a 3rd person

Miscellaneous Bills (cont'd)

Expanding Crime of Mortgage Fraud

- **AB 3108**
 - Amends Financial Code 4973 and PC 532f to prohibit the filing of any document with the county recorder that the person knows contains a deliberate misstatement, representation, or omission, and with the intent to defraud
 - A mortgage broker or person who originates a loan commits mortgage fraud if, with the intent to defraud, the person takes specified actions relating to instructing or deliberately causing a borrower to sign documents reflecting certain loan terms with knowledge that the borrower intends to use the loan proceeds for other uses
 - Prohibits a person who originates a covered loan from avoiding, or attempting to avoid, the application of the law regulating the provision of covered loans by committing mortgage fraud

Miscellaneous Bills (cont'd)

Sideshows

- **AB 1978**
 - **Amends PC 22651 and adds VC 23109.3** to expand vehicle impoundment authority for law enforcement. Authorizes officer to impound a vehicle without taking the driver into custody when arresting that driver for obstructing or placing a barricade upon a highway or offstreet parking facility for the purpose of facilitating or aiding a speed contest or exhibition of speed
- **AB 2807**
 - **Amends VC 23109** to clarify that a “sideshow” is also known as a “street takeover”
- See also AB 2186 and 3085 re: impounding vehicles

Miscellaneous Bills (cont'd)

Fine for Selling Tobacco to Minors

- **AB 2021**
 - **Amends PC 308** to add a separate fine of \$500 for first offense, \$1,000 for second offense, and \$5,000 for subsequent offenses for firms, corporations, businesses, retailers, or wholesalers, who sell or furnish tobacco or tobacco products or paraphernalia to persons under 21 years old

Miscellaneous Bills (cont'd)

Increasing Punishment for Targeting Reproductive Health Services Patients and Providers

- **AB 2099**
 - **Amends GC 6218.01** to increase the punishment from a misdo to either a misdo or felony for a person who posts on the internet or social media the personal info or image of a health care provider, patient, assistant, or others residing at the home address. If it results in bodily injury, it's a felony
 - **Amends PC 422.6** to increase the punishment from a misdo to either a misdo or felony for using force, threat of force, willful injury, intimidation, interference with, oppression, or threat to another, or deface, damage, or destroy the property of another to interfere in the free exercise of a constitutional right or privilege
 - **Amends PC 423.3** to increase the punishment from a misdo to either a misdo or felony for a first violation of PC 423.2(e) (damaging property of reproductive health services patient/provider) or (f) (damaging property of place of religious worship) and for a second violation of PC 423.2(c), (d), (g) or (h) (addressing intentional injury/intimidation/ interference via nonviolent physical obstruction or recording or posting online re: either reproductive health services or religious worship)

Miscellaneous Bills (cont'd)

Post-Arrest Release for Services

- **AB 2215**
 - **Amends PC 849** to authorize an arresting officer to release a person arrested without a warrant from custody without bringing the person to court if the person is, subsequent to being arrested, delivered or referred to a public health or social service organization that provides services including, but not limited to, housing, medical care, treatment for alcohol or substance use disorders, psychological counseling, or employment training and education, the organization agrees to accept the delivery or referral, and no further proceedings are desirable
 - The bill requires that the arrest under this provision be deemed a detention

Miscellaneous Bills (cont'd)

Statute of Limitations

- **AB 2984**
 - **Amends PC 803** to toll the running of the statute of limitations up to three years for fleeing the scene of an injury accident or vehicular manslaughter where the driver is out the state when or after the offense occurs
- **SB 690**
 - **Amends PC 803.7** to expand statute of limitations from 5 years to 7 years for the prosecution of DV cases involving the infliction of corporal injury resulting in traumatic condition
 - Applies to crimes committed on or after January 1, 2025 for which the statute of limitations that was in effect prior to January 1, 2025, has not run as of January 1, 2025

Miscellaneous Bills (cont'd)

No Death Penalty for Persons with Intellectual Disabilities

- **SB 1001**
 - **Amends PC 1376** to codify case law, specifying that persons with intellectual disabilities are ineligible for the death penalty
 - The question of intellectual disability is a question of fact that may be stipulated to by the parties, and would require the court to accept that stipulation, unless the court finds that the stipulation is not supported by documentary evidence that provides a factual basis for concluding by a preponderance of the evidence that the person has an intellectual disability
 - Court must state its factual and legal rationale for declining to accept such a stipulation
 - Defines an intellectual disability that “manifested before the end of the developmental period” and clarifies that it does not require a formal diagnosis or tests prior to the end of the developmental period.
 - Authorizes court to order a defendant to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the defendant’s testing is unreliable

Miscellaneous Bills (cont'd)

AB 2521 - Access to Defense Funds Application; DNA Testing

- Amends PC 987.9(d)
 - In capital case, allows AG **or any other prosecuting state agency** access to contents of indigent defendant's application for specified funds when relevant to an issue raised by defendant **on direct appeal or collateral matter where OSC has issued**
- Amends PC 1405(h)(2)
 - Adds DA to the mix
 - If a court grants a post-conviction motion for DNA testing in a capital or non-capital felony case where the person is incarcerated, the defendant and AG **or DA** must agree upon the choice of lab conducting the DNA testing

SB 285 – Restricting Resentencing

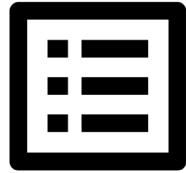
- Amends PC 1172.7, 1172.75 to preclude resentencing for certain persons under both statutes
- Adds (f) to both sections using identical language:
 - “Commencing on January 1, 2025, an individual who has been convicted of a **sexually violent offense** as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code and **sentenced to death or a life term without the possibility of parole**, who, as of January 1, 2025, has not had their judgment reviewed and verified by the sentencing court as provided in subdivision (c), **is not eligible for recall and resentencing** under this section. This subdivision **does not apply retroactively**.”



Assembly
Bill 2483

Assembly Bill 2483

New Requirements for Postconviction Proceedings



Creates uniform resentencing procedures to resolve cases efficiently and consistently across the state, imposes sweeping new requirements favorable to our clients in “postconviction proceedings,” and requires CDCR to provide material relevant to a postconviction proceeding to all parties.



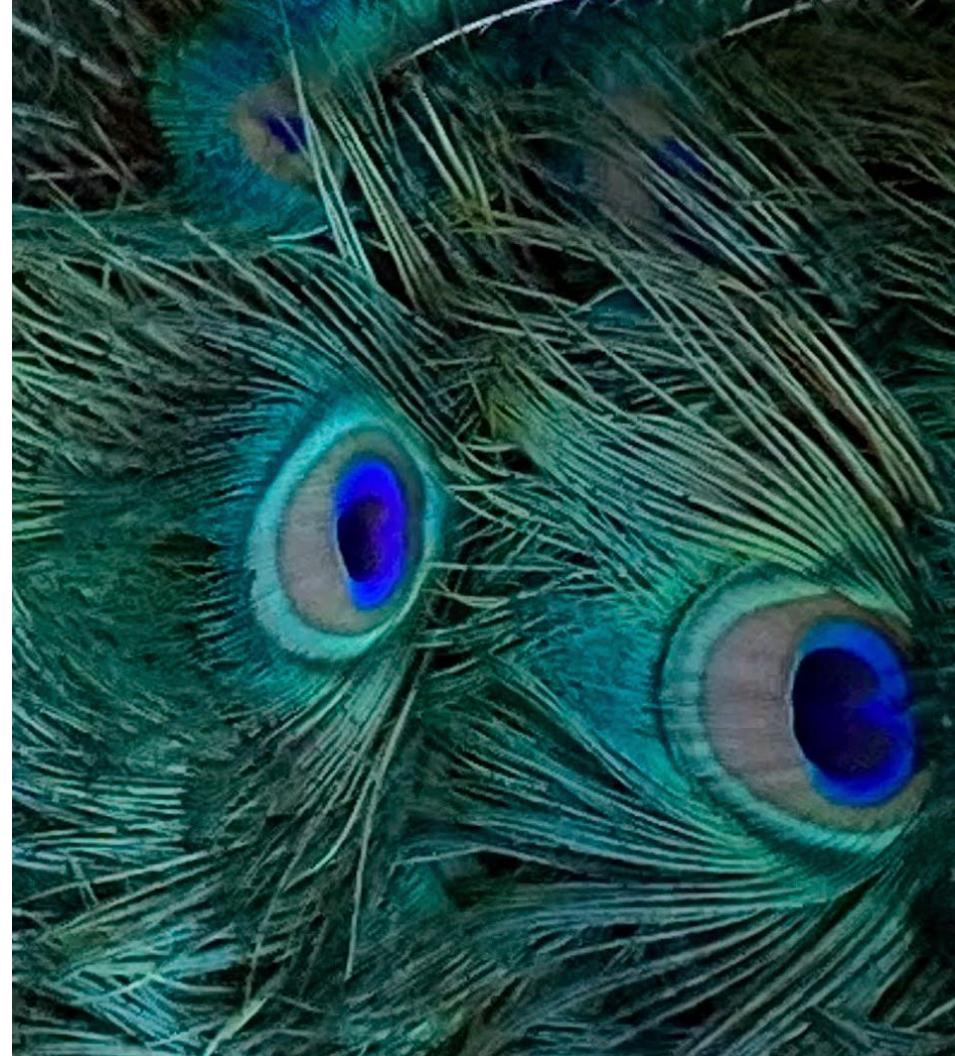
Pen. Code, § 1171 (*new!*)



January 1, 2025

What Is a “Postconviction Proceeding” under Section 1171?

- “A ‘postconviction proceeding’ means a proceeding to modify a sentence or conviction pursuant to an ameliorative statute. Ameliorative statutes **include, but are not limited to**, Sections 1170.18, 1172.1, 1172.6, 1172.7, and 1172.75.” (§ 1171, subd. (a).)



New Postconviction Sentencing Rules

Section 1171 imposes six new rules on postconviction sentencing proceedings

“unless there is a conflict with a more specific rule established in statute, in which case the more specific statute shall apply.” (§ 1171, subd. (c).)

Those new rules are:



New Postconviction Sentencing Rules

§ 1171, subd. (c)

(1) Upon receiving a request to begin a postconviction proceeding that is authorized in law, the court **shall consider whether to appoint counsel** to represent the defendant. This section does not prevent the court from assigning counsel at a later time.

(2) The court **shall consider any pertinent circumstances** that have arisen since the prior sentence was imposed and **has jurisdiction to modify every aspect** of the defendant's sentence, **including if it was imposed after a guilty plea.**

(3) Any changes to a sentence **shall not be a basis for a prosecutor or court to rescind a plea agreement.**

(4) The court **shall state on the record** the **reasons** for its decision to grant or deny the **initial request** to begin a postconviction proceeding and shall provide notice to the defendant of its decision.

(5) After ruling on a request, the court **shall advise** the defendant of their **right to appeal** and the necessary steps and time for taking an appeal.

(6) The parties **may waive a hearing** and **proceed directly to the resentencing.** A defendant may waive their personal presence at a resentencing hearing and may appear via remote technology. [...]

New Postconviction Sentencing Rules (§ 1171, subd. (c): Conflicts with Specified Statutes?

(1) **shall consider whether to appoint counsel to represent the defendant.**

→ Does **not** conflict with sections 1170.18, 1172.1, 1172.6, 1172.7, and 1172.75

(2) **shall consider any pertinent circumstances** that have arisen since the prior sentence was imposed and has jurisdiction to **modify every aspect of the defendant's sentence**, including if it was imposed after a guilty plea.

→ (Rule per *People v. Buycks* (2018) 5 Cal.5th 857) does **not** conflict with sections 1170.18, 1172.1, 1172.6, 1172.7, and 1172.75

(3) **changes to a sentence shall not be a basis for a prosecutor or court to rescind a plea agreement.**

→ (Eliminates limitations per *People v. Stamps* (2020) 9 Cal.5th 685) does **not** conflict with sections 1170.18, 1172.6, 1172.7, 1172.75, and 1172.1. (but § 1172.1(a)(4) requires concurrence from prosecutor if court imposes a necessarily included lesser offense or lesser related offense.) Should settle issue in *People v. Montgomery*, S284662

New Postconviction Sentencing Rules (§ 1171, subd. (c): Conflicts with Specified Statutes? (Cont.)

(4) shall state on the record the reasons for its decision to grant or deny the initial request to begin a postconviction proceeding and shall provide notice to the defendant of its decision.

(5) After ruling on a request, the court shall advise the defendant of their right to appeal and the necessary steps and time for taking an appeal.

(6) The parties may waive a hearing and proceed directly to the resentencing. A defendant may waive their personal presence at a resentencing hearing and may appear via remote technology. [...]

→ Does **not** conflict with sections 1170.18, 1172.6, 1172.7, and 1172.75; **does** conflict with 1172.1 defendant requests, but not for entity requests

→ Does **not** conflict with sections 1170.18, 1172.1, 1172.6, 1172.7, and 1172.75

→ Does **not** conflict with sections 1170.18, 1172.6, 1172.7, and 1172.75, and 1172.1.



Remember: Review
all postconviction
cases for error
under Assembly
Bill 2483!

THANK YOU!!

If you have any questions about matters covered in this presentation, please contact us:

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