2018

Legislative Digest

California District Attorneys Association

The preparation of this publication was financially assisted through a grant from the California Governor's Office of Emergency Services (Cal OES). The opinions, findings, and conclusions in this publication are those of the author and do not necessarily reflect the beliefs, ideals, and goals of CDAA or Cal OES.

CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

Legislative Digest

— 2018 Edition —

by

Kathryn B. Storton

Deputy District Attorney

Santa Clara County District Attorney's Office

Table of Contents

Business and Professions Code

B&P 688
(New)
(Ch. 438) (AB 2789)
(Effective 1/1/2019)

By January 1, 2022, requires health care practitioners who are authorized to issue prescriptions, to have the capability to issue an electronic data prescription and transmit it to a patient's pharmacy. Also by January 1, 2022, requires pharmacies and practitioners authorized to dispense prescriptions, to have the capability to receive an electronic data transmission prescription. Requires, beginning January 1, 2022, that a prescription be issued as an electronic data transmission prescription, unless the circumstances meet a specified exception. Provides that a failure to meet the above requirements is subject to administrative sanctions only. Provides that this new section does *not* apply to a health care practitioner, pharmacist, or pharmacy when providing health care services to an inmate, parolee, or youth under CDCR jurisdiction.

[According to the legislative history of this bill, its purpose is to reduce paper-based prescription fraud, reduce medication errors caused by handwritten prescriptions, and better track prescriptions, in particular opioid prescriptions.]

B&P 740
B&P 741
B&P 742
(New)
(Ch. 324) (AB 2760)
(Effective 1/1/2019)

Adds a new Article 10.7 in Chapter 1 of Division 2 of the Business & Professions Code, entitled "Opioid Medication," to require the offering of a prescription for an opioid overdose reversal drug when an opioid is prescribed, in specified situations. Requires persons authorized to prescribe prescription drugs *to offer* a prescription for naloxone hydrochloride or another approved drug that reverses opioid overdose, if one or more of the following conditions are present:

1. the patient has a prescription for 90 or more morphine milligram equivalents of an opioid medication per day; or
2. an opioid medication is prescribed concurrently with a prescription for benzodiazepine (e.g., an anxiety-reducing sedative such as valium); or
3. the patient has an increased risk for overdose, or a history of overdose, or a history of substance abuse, or is at risk for returning to a high dose of opioid mediation to which the patient is no longer tolerant.

continued

Requires the prescriber, if the patient receives a prescription for naloxone hydrochloride or an equivalent drug, to provide education to the patient and to one or more persons designated by the patient, about overdose prevention and the use of naloxone hydrochloride to reverse an opioid overdose.

Specifically provides that these requirements do not apply to an inmate or a youth under the jurisdiction of CDCR or the Division of Juvenile Justice.

Provides that a prescriber who fails to offer a naloxone prescription as required, or fails to provide the education and use information as required, must be referred to the appropriate licensing board for the imposition of administrative sanctions.

[Uncodified Section One of this bill sets forth the Legislature's findings and declarations that the abuse and misuse of opioids is a serious problem; after alcohol, prescription drugs are the most commonly abused substances by Americans over 12 years of age; almost two million people in the United States suffer from opioid abuse; abuse of opioids is particularly dangerous when snorted, injected, or combined with other drugs; and, the number of opioid overdose deaths is greater than overdose deaths involving heroin or cocaine.]

B&P 4076.7
(New)
(Ch. 693) (SB 1109)
(Effective 1/1/2019)

Requires that whenever a prescription drug containing an opioid is dispensed to a person for outpatient use, the pharmacy or practitioner dispensing the drug shall prominently display on the label or container, by means of a flag or other notification mechanism attached to the container, a notice that states "Caution: Opioid. Risk of overdose and addiction."

B&P 4119.9
(New)
(Ch. 259) (AB 2256)
(Effective 1/1/2019)

Authorizes a pharmacy, wholesaler, or manufacturer to furnish naloxone hydrochloride or other opioid antagonists (i.e., substances that reverse an opioid overdose) to a law enforcement agency if both of the following are met:

1. the naloxone/opioid antagonist is furnished exclusively for use by employees of a law enforcement agency who have completed training in administering it; and

continued

2. the law enforcement agency maintains records for three years regarding the acquisition and disposition of naloxone/opioid antagonists, monitors the supply of these drugs, and ensures the destruction of expired naloxone/opioid antagonists.

[Existing B&P 4052.01 already permits pharmacies to furnish naloxone in accordance with standardized procedures or protocols approved by the California State Board of Pharmacy and the Medical Board of California. The legislative history of this bill states that under current law and regulation by the Board of Pharmacy, a pharmacist may furnish naloxone, without a prescription, provided that the pharmacist has completed specified training and provides information to the person receiving the naloxone. This authority allows any person, whether or not he or she has an existing prescription for an opioid, to receive naloxone. However, the authority to furnish naloxone without a prescription does not extend to wholesalers. Since law enforcement agencies would generally prefer to purchase naloxone in bulk from a wholesaler, most law enforcement agencies that have deployed naloxone have relied on a physician within a local health department or other government agency to write a standing prescription for the agency to purchase naloxone. Law enforcement agencies have argued that this process delays access to naloxone by their officers without providing a substantial public benefit.]

B&P 7126
(Amended)
(Ch. 323) (AB 2705)
(Effective 1/1/2019)

Adds the following new misdemeanor crime as subdivision (b): A person *not l*icensed as a contractor who is acting like a contractor and violates, or fails to comply with, Labor Code 3700. [Labor Code 3700 requires an employer to have workers' compensation insurance. Existing Labor Code 3700.5 makes the failure of an employer to secure workers' compensation insurance a misdemeanor.]

Divides B&P 7126 into subdivisions and designates the existing misdemeanor crime in B&P 7126 as subdivision (a): a licensed contractor, or the agent or officer of a licensed contractor, violating or omitting to comply with, any provision of Article 7.5 of Chapter 9 of Division 3 of the Business and Professions Code, which pertains to the requirement that a contractor have workers' compensation insurance coverage in order to obtain, maintain, or renew a license.

continued

Adds that the prosecution of any offense pursuant to B&P 7126 must be commenced within two years after the commission of the offense, as provided in P.C. 802. [Existing P.C. 802(d)(2) already requires B&P 7126 prosecutions to commence within two years of commission.]

B&P 8050
(New)
(Ch. 648) (AB 2084)
(Effective 1/1/2019)

Authorizes a district attorney, city attorney, the Attorney General, or the Court Reporters Board of California to bring a civil action for a penalty of up to $10,000 for specified violations by a shorthand reporter who is not licensed in California, by a shorthand reporting corporation that is not owned by a California-licensed shorthand reporter, or by an out-of-state shorthand reporting business. Prohibits the following conduct:

1. seeking compensation for a transcript that is in violation of the minimum transcript format standards set forth in the California Code of Regulations;
2. seeking compensation for a certified court transcript applying fees other than those set out in Gov't Code 69950;
3. making a transcript available to one party in advance of other parties as described in the Code of Civil Procedure; or
4. failing to promptly notify a party of a request for preparation of all or a part of a transcript, excerpts, or expedites for one party without the other parties' knowledge, as described in the California Code of Regulations.

[According to the legislative history, the purpose of this bill is to provide the Court Reporters Board of California with enforcement authority over shorthand reporters and shorthand reporting businesses that are not licensed in California.]

B&P 12606
B&P 12606.2
(Amended)
(Ch. 544) (AB 2632)
(Effective 1/1/2019)

Makes changes to the Fair Packaging & Labeling Act to add additional circumstances under which non-functional slack fill is legal. (Slack fill is the empty space between the actual capacity of a container and the volume of product inside it. Slack fill can be "functional," such as when extra packaging is required to protect a product; or it can be "non-functional" in that it misleads a consumer into believing there is more product in the package than there really is.) This bill expands

continued

the definition of what is *not* considered non-functional slack fill, meaning that the slack fill is legal.

Amends B&P 12606 (which prohibits a container from having a false bottom or from being made to be misleading) to add that empty space under the following circumstances is *not* non-functional slack fill:

1. a line or graphic that represents the product fill and a statement communicating that the line or graphic represents the product fill (such as "Fill Line"), with both the line and statement being clearly and conspicuously depicted on the exterior of the packaging. Provides that if the product is subject to settling, the line shall represent the minimum amount of product after settling; or,
2. where the mode of commerce does not allow the consumer to view or handle the physical container or product.

Amends B&P 12606.2 (which applies to food containers subject to the federal Food, Drug, and Cosmetic Act and a specified section of the Code of Federal Regulations) to add that empty space under the following circumstances is *not* non-functional slack fill. (B&P 12606 does not apply to food containers subject to B&P 12606.2):

1. the dimensions of the product or immediate product container are visible through the exterior packaging; or
2. the actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging, except the bottom, accompanied by a clear and conspicuous disclosure that the depiction is the "actual size" of the product or the immediate product container. Provides that if there are multiple units of the same product in a package, only one "actual size" depiction is required per same size product or immediate product container; or
3. a line or graphic that represents the product fill and a statement communicating that the line or graphic represents the product fill (such as "Fill Line"), with both the line and statement being clearly and conspicuously depicted on the exterior of the packaging. Provides that if the product is subject to settling, the line shall represent the minimum amount of product after settling; or

continued

4. where the mode of commerce does not allow the consumer to view or handle the physical container or product.

[B&P 12606.2(f) continues to provide that it is not operative to the extent that it is not identical to federal requirements. Thus, any expansion of California law beyond federal law in this area would be preempted by federal law.]

[This bill also amends H&S 110375 in the same way as it amends B&P 12606. See the Health and Safety Code Section of this Digest.]

B&P 17940
B&P 17941
B&P 17942
B&P 17943
(New)
(Ch. 892) (SB 1001)
(Effective 7/1/2019)

Creates new Chapter 6 in Part 3 of Division 7 of the Business and Professions Code entitled "Bots."

Provides that it is unlawful to use a bot to communicate or interact with another person in California online, with the intent to mislead the other person about its artificial identity for the purpose of knowingly deceiving the person about the content of the communication in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election. Provides that a person using a bot is not liable if the person discloses that it is a bot. Requires the disclosure to be clear, conspicuous, and reasonably designed to inform persons with whom the bot communicates or interacts, that it is a bot.

Provides that this new chapter does not impose a duty on service providers of online platforms, including Web hosting and Internet service providers.

Defines "bot" as an automated online account where all or substantially all of the actions or posts of that account are not the result of a person. Defines "online" as appearing on any public-facing Internet Web site, Web application, or digital application, including a social network or publication. Defines "online platform" as a public-facing Internet Web site, Web application, or digital application, including a social network or publication, that has 10 million or more unique monthly United States visitors or users for a majority of months during the preceding 12 months. Defines "person" as a natural person, corporation, company, partnership, joint venture, association, estate, trust, government, government agency, or other legal entity or any combination thereof.

continued

[A violation may be enforced in a B&P 17200 unfair competition action. Existing B&P 17206 provides that a person who engages in unfair competition is liable for a civil penalty of up to $2,500 for each violation which shall be recovered in an action brought by a district attorney, county counsel, city attorney, city prosecutor, or the Attorney General.]

[According to the legislative history of this bill, its purpose is to shed light on fake accounts that simulate real people and spread false information across social media platforms.]

B&P 21636
(Amended)
B&P 21636.1
(New)
(Ch. 184) (AB 1993)
(Effective 1/1/2019)

Reduces the holding requirement for non-firearm tangible personal property in the possession of a secondhand dealer or coin dealer (e.g., a pawnbroker) from 30 days to seven days. Firearms remain in B&P 21636 and remain subject to the 30-day holding requirement. Non-firearm property is removed from existing B&P 21636 and moved to new B&P 21636.1 so that it is subject to holding by pawnbrokers for only seven days.

New B&P 21636.1 applies to non-firearm tangible personal property, which is defined in existing B&P 21627 as property with a serial number or personalized initials; property, including motor vehicles, received in pledge as security for a loan by a pawnbroker; and all personal property that the Attorney General statistically determines through crime data constitutes a significant class of stolen goods. As with existing B&P 21636, during the hold period, property must be produced for inspection by law enforcement. And, any property stored off the business premises must be produced in the business premises within one business day of a request. Provides that the seven-day holding period begins to run on the date the dealer reports the acquisition of the property to CAPSS (the California Pawn and Secondhand Dealer System).

Provides that a secondhand dealer or coin dealer may sell property after only five days if the sale is recorded in the dealer's book of records, and if the record of sale includes the buyer's name, address, and telephone number or email address or electronic address for receiving text messages. Provides that in documenting the sale, the dealer does not have any duty to verify the accuracy of the information provided by the buyer. Requires the dealer to retain this

continued

information for 21 days and provides that it shall be available for inspection by a local law enforcement agency during the 21 days. Provides that if law enforcement notifies the dealer within the 21-day period that the property has been reported stolen, the record of sale and all information contained in it shall be provided to law enforcement upon written request by the agency.

[According to the legislative history of this bill, having to hold property for 30 days puts pawnbrokers at a disadvantage because there are hundreds of online websites where consumers can buy secondhand goods that same day. Law enforcement agencies opposed this bill, pointing out that a seven-day holding period does not provide an adequate opportunity for law enforcement to investigate potential matches to property that has been reported stolen.]

B&P 22580
(Amended)
(Ch. 347) (AB 3067)
(Effective 1/1/2019)

Expands the list of products and services for which online and mobile application marketing and advertising directed to minors is prohibited, by adding cannabis, cannabis products, cannabis businesses, and instruments or paraphernalia designed for smoking or ingesting cannabis or cannabis products. [This section continues to prohibit online and mobile application marketing/advertising directed to minors for dangerous or harmful products such as alcohol, firearms, ammunition, tobacco, cigarettes, electronic cigarettes, BB devices, fireworks, body branding, permanent tattoos, obscene matter, etc.]

This amendment specifically provides that online cannabis advertising/marketing directed to minors is prohibited, notwithstanding existing B&P 26151(b). B&P 26151 was created by Proposition 64, the Adult Use of Marijuana Act (AUMA), enacted by the voters in November 2016. Subdivision (b) of B&P 26151 provides that any cannabis advertising or marketing placed in broadcast, cable, radio, print, and digital communications shall only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data. The amendment to B&P 22580 simply prohibits the advertising or marketing of cannabis directed to minors.

[Note: Section 10 of Proposition 64 provides that the Legislature may amend some parts of Proposition 64 by

continued

a majority vote and others by a two-thirds vote. This bill was passed unanimously by both the Senate (37–0) and the Assembly (73–0). Uncodified Section Two of this bill contains the Legislature's findings that subdivision (j) in Section 3 of Proposition 64 provided that one of the purposes of Proposition 64 was to prohibit the marketing and advertising of non-medical marijuana to persons under age 21. The Legislature then declares that this bill furthers the purpose and intent of AUMA by protecting minors from being exposed to the advertising and marketing of cannabis and cannabis products.]

[Note: B&P 22580 is part of a chapter in the Business and Professions Code entitled "Privacy Rights for California Minors in the Digital World."]

B&P 22942
(New)
(Ch. 262) (AB 2450)
(Effective 1/1/2019)

Creates Chapter 31 in Division 8 of the Business and Professions Code entitled "Electrically Conducted Balloons."

Requires the manufacturer of a balloon constructed of electrically conductive material (e.g., a mylar balloon) to permanently mark each balloon with a printed statement that warns the consumer about the dangerous risk of fire if the balloon comes in contact with an electrical power line and to permanently mark each balloon with the identity of the manufacturer.

Requires a seller or distributor of a balloon constructed of electrically conductive material that is filled with a gas lighter than air (e.g., helium) to attach an object of sufficient weight to counter the lift capability and to **not** attach the balloon to an electrically conductive string, tether, or streamer, or to another electrically conductive balloon or object. Does not apply to a manned hot air balloon or to balloons used in governmental or scientific research projects.

The above provisions were removed from P.C. 653.1 where they were subject to infraction and misdemeanor criminal penalties, and added to new B&P 22942 where they are now subject to civil action.

According to the legislative history of this bill, the purpose of adding these provisions to the Business and Professions Code is so that district attorneys, county counsels, and city attorneys/prosecutors can bring B&P 17200 unfair

continued

competition actions to obtain civil penalties of up to $2,500 instead of being limited to prosecuting an infraction crime with a fine of up to only $100. Existing B&P 17206 provides that a person who engages in unfair competition is liable for a civil penalty of up to $2,500 for each violation which shall be recovered in an action brought by a district attorney, county counsel, city attorney, city prosecutor, or the Attorney General.

[The legislative history of this bill details the fire danger of mylar balloons contacting power lines, and the power outages they cause. Southern California Edison reported that metallic balloon-related outages are on the rise and that it handled 1,094 mylar balloon-related outages in 2017. PG&E reported 456 mylar balloon outages in 2017.]

B&P 25621.5
(New)
(Ch. 827) (AB 2914)
(Effective 1/1/2019)

Prohibits an alcohol licensee (licensed by the Department of Alcohol Beverage Control), at its licensed premises, from selling, offering, or providing cannabis or cannabis products, including an alcoholic beverage that contains cannabis, and prohibits the manufacture, sale, or offering for sale of an alcoholic beverage that contains tetrahydrocannabinol or cannabinoids, regardless of source.

[According to the legislative history of this bill, it codifies existing regulations and prohibitions issued by the Department of Alcohol Beverage Control and the Department of Public Health on consumption and infusion of alcohol products with cannabis, by retailers.]

[This bill also creates new B&P 26070.2 to prohibit a cannabis licensee from selling, offering, or providing a cannabis product that is an alcoholic beverage, including an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage. See below.]

B&P 26002
(New)
(Ch. 62) (AB 710)
(Effective 7/9/2018)

Provides that the Medicinal and Adult-Use Cannabis Regulation & Safety Act (MAUCRSA: B&P 26000–26231.2) does *not* apply to any product containing cannabidiol that has been approved by the federal Food and Drug Administration (FDA) and that has either been placed in a federal schedule other than Schedule I or has been exempted from one or more provisions of the federal Controlled Substances Act, and that is intended for prescribed use to treat a medical condition.

continued

According to the legislative history of this bill and uncodified Section One, there is a drug containing cannabidiol (Epidiolex) that was in trials with the FDA and shows promise as an effective treatment for epilepsy. The purpose of this amendment is make a medication containing cannabidiol legal in California as soon as it is approved by the FDA and removed from federal Schedule I or exempted from one or more provisions of the federal Controlled Substances Act. Cannabidiol is a compound extracted from cannabis that does not cause psychoactive activity and has pain relieving, anti-inflammatory, and anti-psychotic properties.

It appears that MAUCRSA does *not* apply to Epidiolex as of September 27, 2018. According to the U.S. Food and Drug Administration website, on June 25, 2018, it approved Epidiolex for the treatment of seizures associated with two rare and severe forms of epilepsy. The website states that this is the first FDA-approved drug that contains a purified drug substance derived from marijuana. According to the Drug Enforcement Administration (DEA) website, DEA announced on September 27, 2018, that Epidiolex was being placed in Schedule V of the Controlled Substances Act, the least restrictive schedule. (Marijuana is still in Schedule I.) The DEA announcement states that marijuana and cannabidiol derived from marijuana remain against the law, except for the limited circumstances where it has been determined there is a medically approved benefit. With both FDA approval and the placing of Epidiolex into Schedule V, the conditions of the bill appear to have been met, and this particular drug—Epidiolex—is not governed by MAUCRSA.

This bill also creates new H&S 11150.2 to permit the prescribing and dispensing of a product containing cannabidiol when the above conditions are met.

B&P 26051.5
(Amended)
(Ch. 6) (AB 106)
(Effective 3/13/2018)
and
(Amended)
(Ch. 37) (AB 1817)
(Effective 6/27/2018)

Authorizes the Bureau of Cannabis Control, the Dep't of Food and Agriculture, and the State Dep't of Public Health to obtain criminal history information from the state DOJ and the FBI for an applicant for a state license relating to cannabis. Requires DOJ to transmit to the FBI fingerprint images and related information, and to compile and disseminate the FBI's response to the licensing authority.

continued

[Pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (B&P 26000–26231.2), the Bureau of Cannabis Control has authority over licensing for the transportation, storage, distribution, testing, and sale of cannabis; the Dep't of Food & Agriculture has authority over licensing for the cultivation of cannabis; and the State Dep't of Public Health has authority over licensing for the manufacturing of cannabis products.]

B&P 26070.2
(New)
(Ch. 827) (AB 2914)
(Effective 1/1/2019)

Prohibits a cannabis licensee from selling, offering, or providing a cannabis product that is an alcoholic beverage, including an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage.

[According to the legislative history of this bill, it codifies existing regulations and prohibitions issued by the Dep't of Alcohol Beverage Control (ABC) and the Dep't of Public Health on consumption and infusion of alcohol products with cannabis, by retailers.]

[This bill also creates new B&P 25621.5 to prohibit an alcohol licensee (licensed by the ABC), at its licensed premises, from selling, offering, or providing cannabis or cannabis products, including an alcoholic beverage that contains cannabis, and prohibits the manufacture, sale, or offering for sale of an alcoholic beverage that contains tetrahydrocannabinol or cannabinoids, regardless of source. See above.]

B&P 26104
(Amended)
(Ch. 546) (AB 2721)
(Effective 1/1/2019)

Expands this section to permit a licensed cannabis testing laboratory to receive and test recreational cannabis from a person age 21 or older that has been grown by that person and will be used solely for his or her personal use. Prohibits a testing laboratory from certifying cannabis samples for resale or transfer to others. Continues to permit cannabis testing labs to receive and test medical cannabis from a qualified patient or primary caregiver.

[According to the legislative history of this bill, the purpose of these testing provisions is so that recreational cannabis users can learn the potency, ingredients, and purity of their crop and protect themselves from ingesting harmful contaminants, such as mold, hazardous chemicals, dirt or debris.]

Civil Code

Civil Code 53.5
(New)
(Ch. 853) (SB 1194)
(Effective 1/1/2019)

Prohibits a hotel, motel, lodging establishment, bus company, or any employee of these entities from disclosing or releasing, except to a California peace officer, guest information to a third party without a court-issued subpoena, warrant, or order.

Provides that this section "shall not be construed to prevent a private business from disclosing records in a criminal investigation if a law enforcement officer in good faith believes that an emergency involving imminent danger of death or serious bodily injury to a person requires a warrantless search, to the extent permitted by law."

[According to the legislative history of this bill, its purpose is to prevent innkeepers and bus companies from voluntarily providing information about guests and passengers to U.S. Immigration and Customs Enforcement (ICE).]

Civil Code 1798.81.6
(New)
(Ch. 532) (AB 1859)
(Effective 1/1/2019)

Provides that a consumer credit reporting agency that owns, licenses, or maintains personal information about a California resident, or a third party that maintains personal information on behalf of a consumer credit reporting agency, that knows or reasonably should know that the computer system it operates is subject to a security vulnerability that poses a significant risk, must do all of the following:

1. install a software update to address the vulnerability, if available and if the agency knows or reasonably should know the update is available; and
2. employ reasonable compensating controls until the software update is complete.

Requires that testing, planning, and assessment for the implementation of a software update begin within three business days of the agency becoming aware of the vulnerability and of the availability of a software update. Requires the software update to be complete within 90 days of the agency becoming aware of the vulnerability and of the availability of a software update.

Provides that the Attorney General has exclusive authority to enforce this section.

continued

[This new section is in Title 1.81 of Part 4 of Division 3 of the Civil Code entitled "Customer Records." Existing Civil Code 1798.84 provides that any customer injured by a violation of this title may bring a civil action to recover damages. It also provides that any business that violates, proposes to violate, or has violated this title may be enjoined.]

Civil Code 1798.90.1
(Amended)
(Ch. 548) (AB 2769)
(Effective 1/1/2019)

Expands this misdemeanor crime of a business or organ procurement organization unlawfully retaining or unlawfully using information obtained by *swiping* a driver's license or identification card, to now apply to the *scanning* of a driver's license or identification card. Updates this section to account for new technology by adding the *scanning* of a driver's license or identification card issued by the DMV to the type of activity (*swiping* a license or card) a business may engage in, but only for the same purposes for which a business may swipe a license or card (e.g., to verify a persons' age or the authenticity of the driver's license or identification card; to transmit information to a check service company for the purpose of approving negotiable instruments.) Also permits an organ procurement organization to scan in addition to swiping, for the purpose of a person identifying himself or herself as a registered organ donor.

Continues to provide that a business or organ procurement organization cannot retain or use any of the information obtained by electronic means for any purposes other than as provided in this section. Continues to provide that a violation is a misdemeanor crime, punishable by up to one year in jail and/or by a fine of up to $10,000.

[The legislative history of this bill expresses a concern about businesses scanning driver's licenses and then retaining the data, analyzing it, and sharing it with other businesses.]

Civil Code 1798.91.04
Civil Code 1798.91.05
Civil Code 1798.91.06
(New)
(Ch. 886) (SB 327)
and
(Ch. 860) (AB 1906)
(Effective 1/1/2020)

Creates new Title 1.81.26 in Part 4 of Division 3 of the Civil Code entitled "Security of Connected Devices."

Requires manufacturers of connected devices to equip them with reasonable security features appropriate to the nature of the device, to prevent hacking and cyber attacks. Requires the security feature to be designed to protect the device and the information in it from unauthorized access, destruction, use, modification, or disclosure. Defines "connected device" as a device or physical object that is capable of connecting to the Internet, directly or indirectly, and that is assigned an Internet Protocol address or Bluetooth address.

Provides that a district attorney, county counsel, city attorney, or the Attorney General have the exclusive authority to enforce this title. (Provides that there is no private right of action.)

[The legislative history of these bills mentions the wide variety of appliances and devices that can connect to the Internet such as microwaves, refrigerators, and children's toys.]

Civil Code 1798.99.1
(New)
(Ch. 872) (AB 2511)
(Effective 1/1/2020)

Creates new Title 1.81.45 in Part 4 of Division 3 of the Civil Code entitled "The Parent's Accountability and Child Protection Act."

Requires persons and businesses that sell products or services in California that are illegal to sell to a minor, to take reasonable steps to ensure that the purchaser is of legal age at the time of purchase or delivery.

Provides that reasonable steps include:

1. requiring the purchaser or recipient to input, scan, or provide a government issued identification;
2. requiring the purchaser to use a non-prepaid credit card for an online purchase;
3. implementing a system that restricts individuals with accounts designated as minor accounts from purchasing the product; or
4. shipping the product or service to an individual who is of legal age.

continued

Provides that "reasonable steps" does not include consent obtained through the minor.

Provides that a seller's reasonable and good faith reliance on bona fide evidence of the purchaser or recipient's age shall constitute an affirmative defense.

Specifies that these products and services are subject to this new section: aerosol containers of paint that are capable of defacing property, etching cream capable of defacing property, dangerous fireworks, tanning in an ultraviolet tanning device, dietary supplement products containing ephedrine group alkaloids, body branding, firearms, BB devices, ammunition, tobacco, cigarettes, electronic cigarettes, paraphernalia for smoking or ingesting tobacco or controlled substances, and less lethal weapons.

Authorizes a public prosecutor to enforce this section by bringing an action to recover a civil penalty of up to $7,500 for each violation. [Existing Gov't Code 26500 provides that the district attorney is the public prosecutor, except as otherwise provided by law.]

Provides that this new section does not apply to a business that is regulated by state or federal law requiring greater age verification.

Civil Code 1798.100–1798.199
(New)
(Ch. 55) (AB 375)
and
(Ch. 735) (SB 1121)
(Effective 1/1/2020)

Creates new Title 1.81.5 in Part 4 of Division 3 of the Civil Code entitled "The California Consumer Privacy Act of 2018." This Act provides a number of rights to consumers, such as the right to request that a business disclose to a consumer the specific personal information the business has collected about that consumer, the right to request that a business delete personal information it has collected about a consumer, and the right to direct a business *not* to sell the consumer's personal information to a third party.

A complete explanation of the California Consumer Privacy Act is beyond the scope of this digest.

Civil Code 1798.150 permits a consumer to bring a civil action for a violation of the Act to recover damages of between $100 and $750 per incident or actual damages, whichever is greater; or injunctive or declaratory relief; or any other relief the court deems proper. Civil Code 1798.155

continued

permits the Attorney General to bring a civil action against a business that fails to cure a violation within 30 days of being notified. It provides for a civil penalty of up to $2,500 for each violation or up to $7,500 for each intentional violation. Civil Code 1798.185 requires the Attorney General, by July 1, 2020, to "solicit broad public participation" and adopt regulations to further the purposes of this Act.

Civil Code 1798.201
Civil Code 1798.202
(New)
(Ch. 696) (SB 1196)
(Effective 1/1/2019)

Creates new Title 1.81.6 in Part 4 of Division 3 of the Civil Code entitled "Identity Theft in Business Entity Filings."

Authorizes a person who has learned or reasonably suspects that his or her personal identifying information has been used unlawfully in a business entity filing (i.e., a document filed with the Secretary of State pursuant to the Corporations Code, Financial Code, or Insurance Code), and has initiated a P.C. 530.6(a) identity theft law enforcement investigation, to petition the superior court for an ex parte order directing the perpetrator to appear at a hearing and show cause for both of the following:

1. why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity; and
2. why the personal identifying information should be associated with the business entity.

Provides that the petition shall be heard and determined based on declarations, affidavits, police reports, and other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court. If the court finds that the victim's information has been used unlawfully, the court may order that the personal identifying information be redacted from the business entity filing or labeled to show that the data is impersonated, and may order the data to be removed from publicly accessible electronic indexes and databases.

[The language of this bill is modeled after existing P.C. 530.6, which permits a victim of identity theft to petition the court for a judicial determination of his or her factual innocence, where the perpetrator of the identity theft has been arrested for, cited for, charged with, or convicted of a crime under the victim's identity.]

Civil Code 1834.9.5
(New)
(Ch. 899) (SB 1249)
(Effective 1/1/2020)

Prohibits a manufacturer from importing for profit, selling, or offering for sale any cosmetic that was developed or manufactured using an animal test that was conducted or contracted by the manufacturer, or any supplier of the manufacturer, on or after January 1, 2020.

Defines "animal test" as the internal or external application of a cosmetic, either in its final form or any ingredient thereof, to the skin, eyes, or other body part of a live, non-human vertebrate.

Contains several exceptions, such as an animal test of a cosmetic that is required by a federal or state regulatory authority if all of the following apply:

1. the ingredient is in wide use and cannot be replaced by another ingredient capable of performing a similar function; and
2. a specific human health problem is substantiated, and the need to conduct animal tests is justified and supported by a detailed research protocol; and
3. there is not a non-animal alternative method accepted for the relevant endpoint by the relevant federal or state regulatory authority.

Provides that this new section does not apply to:

1. a cosmetic, if the cosmetic in its final form was sold in California or tested on animals before January 1, 2020, even if the cosmetic is manufactured after that date; or
2. an ingredient sold in California or tested on animals before January 1, 2020, even if the ingredient is manufactured after that date.

Provides that cosmetic inventory found to be in violation of the test ban may be sold for a period of 180 days, thus giving sellers up to 180 days to remove products from store shelves.

Provides that a violation is punishable by a civil fine of $5,000 and an additional $1,000 for each day the violation continues. Provides that a violation may be enforced by a district attorney or city attorney and that the fine shall be paid "to the entity that is authorized to bring the action." (i.e., the district attorney or the city attorney, apparently.)

continued

Provides that a district attorney or city attorney may review the testing data that a manufacturer has relied on in the development of a cosmetic sold in California. (It appears that a search warrant or subpoena is not required.) Subdivision (f) provides in its entirety:

> A district attorney or city attorney may, upon a determination that there is a reasonable likelihood of a violation of this section, review the testing data upon which a cosmetic manufacturer has relied in the development or manufacturing of the relevant cosmetic product sold in the state. Information provided under this section shall be protected as a trade secret as defined in subdivision (d) of Section 3426.1. Consistent with the procedures described in Section 3426.5, a district attorney or city attorney shall enter a protective order with a manufacturer before receipt of information from a manufacturer pursuant to this section, and shall take other appropriate measures necessary to preserve the confidentiality of information provided pursuant to this section.

Civil Code 1939.22
(New)
Civil Code 1939.23
(Amended)
(Ch. 344) (AB 2620)
(Effective 1/1/2019)

Amends Civil Code 1939.23 to permit a rental vehicle company to activate electronic surveillance technology on a rental vehicle that has not been returned within 72 hours of the contracted return date. Requires the rental company to provide a 24-hour notice before activating electronic surveillance, and requires the notice to be by telephone and electronically pursuant to new Civil Code 1939.22, unless the renter has not provided a telephone number or agreed to electronic communication pursuant to 1939.22. Requires the rental contract to advise a renter that electronic surveillance may be activated and requires the renter to acknowledge this advisement by initialing it in the rental agreement. Also requires an oral advisement at the time the rental agreement is executed.

New Civil Code 1939.22 requires a rental company to send communications to a renter electronically if the renter agrees to that communication in the rental agreement. Prohibits a rental company from denying a rental if a renter chooses not to receive communications electronically. Provides that "electronically" does not include a cell phone.

continued

Civil Code 1939.23 continues to permit the use of electronic surveillance by rental car companies when informed by law enforcement that a rented vehicle is stolen, abandoned, or missing; when a rental vehicle has not been returned within one week of the expiration of the rental agreement; when the rental company discovers that a rental vehicle has been stolen or abandoned; and when the rental vehicle is the subject of an AMBER alert.

[Existing V.C. 10855 continues to provide that a person who willfully and intentionally fails to return a rented vehicle within five days after the rental agreement has expired, is presumed to have embezzled the vehicle. Existing V.C. 10500 requires a peace officer to enter a rental vehicle into the Dep't of Justice Stolen Vehicle System if a rented vehicle has not been returned within five days after the owner has made a written demand for its return. This bill originally started out by decreasing the five-day period to 72 hours, then further reduced it to 48 hours, so that the failure to return a rented vehicle within 48 hours would trigger the presumption of embezzlement and entry into the Stolen Vehicle System. This would have allowed rental car companies to obtain much sooner, the assistance of law enforcement in recovering unreturned rental vehicles. The Legislature then eliminated any amendments to V.C. 10855 and 10500 and instead amended Civil Code 1939.23 to permit the activation of electronic surveillance by rental car companies at the 72-hour mark.]

Civil Code 2920.5
(Repealed)
Civil Code 2923.4
Civil Code 2923.5
(Amended)
Civil Code 2923.55
(New)
Civil Code 2923.6
Civil Code 2923.7
Civil Code 2924
(Amended)
Civil Code 2924.9
Civil Code 2924.10
(New)
Civil Code 2924.11
(Repealed & Added)
Civil Code 2924.12
Civil Code 2924.15
Civil Code 2924.17
(Amended)
Civil Code 2924.18
Civil Code 2924.19
(New)
(Ch. 404) (SB 818)
(Effective 1/1/2019)

Re-enacts, with some revisions, the California Homeowner Bill of Rights, which was effective beginning January 1, 2013. A number of its provisions sunset on January 1, 2018. The Homeowner Bill of Rights was a response to the foreclosure crisis and consisted of a series of related bills, including two identical bills (SB 900 (Chapter 87) and AB 278 (Chapter 86)) that were enacted in 2012. This bill of rights is designed to ensure fairness and transparency in the foreclosure process. A number of provisions were inadvertently allowed to lapse.

Civil Code 3345.1
(New)
(Ch. 166) (AB 2105)
(Effective 1/1/2019)

Provides that in a civil action brought by, or on behalf of, a person who is a minor or non-minor dependent and who is a victim of commercial sexual exploitation by an adult, the trier of fact in a civil case may impose a fine or civil penalty in an amount up to three times greater than authorized by the statute, if the court makes a specified affirmative finding. Also provides that if the statute does not authorize a specific fine or civil penalty amount, the trier of fact may impose a fine or civil penalty up to three times greater than the amount the trier of fact would impose in the absence of an affirmative finding.

In order to impose a fine or penalty of up to three times greater, the court must affirmatively find one or more of these factors:

1. the defendant's conduct was directed to more than one minor or non-minor dependent; or

continued

2. one or more minors or non-minor dependents suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct; or
3. the defendant knew or reasonably should have known that the victim was a minor or non-minor dependent.

Provides that if the trier of fact is not authorized by statute to impose a civil penalty in a commercial sexual exploitation action, the court may award a civil penalty of between $10,000 to $50,000 for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding of one or more of the three factors listed above.

Defines "commercial sexual exploitation" as an act committed for the purpose of obtaining property, money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or non-minor dependent, including, but not limited to, an act that would constitute a violation of sex trafficking of a minor in violation of P.C. 236.1(c), pimping of a minor in violation of P.C. 266h, pandering of a minor in violation of P.C. 266i, procurement of a child under age 16 for lewd and lascivious acts in violation of P.C. 266j, solicitation of a child for the purpose of sex trafficking (P.C. 236.1(c)) or prostitution (P.C. 647(b)(3)), or an act of sexual exploitation described in P.C. 11165.1(c) or (d) (e.g., obscene matter).

[This new section is modeled after existing Civil Code 3345, which permits the tripling of a fine or civil penalty in a civil action brought by, or on behalf of, a senior or a disabled person to redress deceptive acts or practices or unfair methods of competition.]

Civil Code 3485
(Amended)
(Ch. 880) (AB 2930)
(Effective 1/1/2019)

Extends the sunset date, from January 1, 2019, to January 1, 2024, in order to continue the pilot program whereby specified city attorneys or city prosecutors (the cities of Long Beach, Los Angeles, Oakland, and Sacramento) are authorized to institute eviction proceedings against a tenant when a private landlord is unwilling to evict, where the tenant has committed a nuisance caused by illegal conduct involving unlawful weapons or unlawful ammunition on real property.

continued

Continues to require participating cities to report specified information to the California Research Bureau, and eliminates some of the items that need to be reported. Adds that a participating jurisdiction shall not be permitted to file an unlawful detainer action pursuant to this section unless it has made a good faith effort to collect and timely report all required information to the California Research Bureau. (This addition makes this section consistent with existing Civil Code 3486.5, which pertains to evictions for illegal conduct involving controlled substances on real property.)

Civil Code 3486.5
(Amended)
(Ch. 880) (AB 2930)
(Effective 1/1/2019)

Extends the sunset date, from January 1, 2019, to January 1, 2024, in order to continue the pilot program whereby specified city attorneys or city prosecutors (the cities of Oakland and Sacramento) are authorized to institute eviction proceedings against a tenant pursuant to Civil Code 3486 when a private landlord is unwilling to evict, where the tenant has committed a nuisance caused by illegal conduct involving controlled substances on real property.

Adds the City of Long Beach to this program.

[The City of Los Angeles is specified in existing Civil Code 3486, which does not have a sunset date. Civil Code 3486 contains the substantive provisions for the controlled substance eviction program. Section 3486.5 provides that it applies to the City of Oakland and the City of Sacramento, and now, the City of Long Beach.]

Continues to require participating cities to report specified information to the California Research Bureau, and eliminates some of the items that need to be reported.

Adds that a defendant may raise as an affirmative defense the failure of the participating jurisdiction to make a good faith effort to collect and timely report all required information to the California Research Bureau. (This addition makes this section consistent with existing Civil Code 3485, which pertains to evictions for illegal conduct involving weapons or ammunition on real property.)

Code of Civil Procedure

C.C.P. 338
(Amended)
(Ch. 796) (SB 1453)
(Effective 1/1/2019)

Extends, from one to three years, the statute of limitations for a civil action commenced pursuant to Pub. Res. C. 4601.1 for violations of the Forest Practice Act (Pub. Res. C. 4511–4629.13) that relate to the conversion of timberland to non-forestry-related agricultural uses.

Provides that the statute of limitations begins to run upon discovery of the violation by the Dep't of Forestry and Fire Protection.

[According to the legislative history of this bill, the concern is the increase in the number of Forest Practice Act violations resulting from the illegal conversion of timberland for cannabis cultivation operations and the time it takes to investigate these violations. An extension of the statute of limitations for bringing actions against violators is necessary in order to give inspectors time to investigate, prepare a report, and refer the matter to a district attorney or the Attorney General to file a civil action.]

[Pub. Res. C. 4601.1 continues to provides that an intentional, knowing, or negligent violation of the Forest Practice Act or a rule or regulation adopted by the State Board of Forestry and Fire Protection pursuant to the Act is subject to a civil penalty of up to $10,000 and that such an action may be brought in superior court by a district attorney or the Attorney General. Also continues to provide that a civil penalty may be administratively imposed by the Dep't of Forestry and Fire Protection.]

C.C.P. 338.1
(Amended)
(Ch. 141) (AB 1980)
(Effective 1/1/2019)

Extends, from one year to five years, the statute of limitations for bringing an action for a violation relating to the Aboveground Petroleum Storage Act (APSA: H&S 25270–25270.13) by adding violations of this Act to the list of hazardous material and underground hazardous substance storage violations in the Health and Safety Code for which an action for civil penalties or punitive damages may be brought within five years after discovery by the agency bringing the action. The purpose of the amendment is to give investigators and prosecutors sufficient time to initiate civil enforcement actions for APSA violations.

C.C.P. 340.16
(New)
(Ch. 939) (AB 1619)
(Effective 1/1/2019)

Creates a specific statute of limitations for *civil* actions relating to a sexual assault that occurred on or after the plaintiff's 18th birthday. Permits a civil action to be filed within 10 years from the date of the last act of sexual assault by the defendant against the plaintiff, or within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from the sexual assault, whichever is later. Defines "sexual assault" as any of these crimes: P.C. 243.4 (sexual battery), 261 (rape), 262 (spousal rape), 264.1 (forcible sex act in concert), 286 (sodomy), 288a (oral copulation), or 289 (sexual penetration). Provides that this statute of limitations applies to any action that is commenced on or after January 1, 2019.

[Existing C.C.P. 340.1 continues to provide detailed provisions for the filing of a civil action for childhood sexual abuse, including providing for the filing of such an action by the victim's 26th birthday or within three years of the date the victim discovers or reasonably should have discovered that psychological illness or injury occurring after reaching age 18 was the result of the sexual abuse, whichever is later.]

Elections Code

Elections C. 9118.5
Elections C. 9215.5
Elections C. 9311
(New)
(Ch. 155) (SB 1153)
(Effective 1/1/2019)

Provides that the proponent of a county, municipal, or district initiative may withdraw the initiative at any time before the 88th day before the election, whether or not the petition has already been found sufficient by the elections official.

The legislative history of this bill cites the example of competing City of Los Angeles cannabis ballot measures in 2017. Cannabis industry representatives got a cannabis measure qualified and placed on the ballot, and then after the Los Angeles City Council and cannabis industry representatives came to an agreement, a competing measure qualified for the ballot. Los Angeles did not have a process in place to withdraw a measure after it qualified for the ballot, so the cannabis industry ended up campaigning with the Los Angeles City Council for the competing measure.

[Existing Elections C. 9604 permits the proponents of a *statewide* initiative or referendum measure to withdraw it after filing the petition with the appropriate elections official at any time before the Secretary of State certifies that the measure has qualified for the ballot.]

Elections C. 18302
(Amended)
(Ch. 96) (AB 1678)
(Effective 7/16/2018)

Adds new misdemeanor crimes relating to false information about voting locations, voter registration qualifications, election dates, and voting days and times. Provides that it is a misdemeanor crime to, with actual knowledge and intent to deceive, distribute by mail, radio, television, telephone, text message, email, or any other electronic means, literature or any other form of communication to a voter that includes any of the following:

1. the incorrect location of a vote center, office of an elections official where voting is permitted, vote by mail drop box, or vote by mail ballot drop-off location; or
2. false or misleading information regarding the qualifications to vote or to register to vote; or
3. false or misleading information about the date of an election or the dates and times that voting may occur.

[The new misdemeanor crimes are in subdivision (b). Subdivision (a) is the existing misdemeanor crime of mailing

continued

or distributing false information about where a voter's precinct polling place is.]

[Unless there is a specific Elections Code section that provides the misdemeanor punishment for the above crimes (which this writer could not find), the crimes are punishable pursuant to P.C. 19, which provides for a punishment of up to six months in jail and/or a fine of up to $1,000. P.C. 19 provides that it applies in cases where a different misdemeanor punishment is *not* prescribed by any law of this state.]

Environmental Law

C.C.P. 338
(Amended)
(Ch. 796) (SB 1453)
(Effective 1/1/2019)

Extends, from one to three years, the statute of limitations for a civil action commenced pursuant to Pub. Res. C. 4601.1 for violations of the Forest Practice Act (Pub. Res. C. 4511–4629.13) that relate to the conversion of timberland to non-forestry-related agricultural uses.

Provides that the statute of limitations begins to run upon discovery of the violation by the Dep't of Forestry and Fire Protection.

[According to the legislative history of this bill, the concern is the increase in the number of Forest Practice Act violations resulting from the illegal conversion of timberland for cannabis cultivation operations and the time it takes to investigate these violations. An extension of the statute of limitations for bringing actions against violators is necessary in order to give inspectors time to investigate, prepare a report, and refer the matter to a district attorney or the Attorney General to file a civil action.]

[Pub. Res. C. 4601.1 continues to provides that an intentional, knowing, or negligent violation of the Forest Practice Act or a rule or regulation adopted by the State Board of Forestry and Fire Protection pursuant to the Act is subject to a civil penalty of up to $10,000 and that such an action may be brought in superior court by a district attorney or the Attorney General. Also continues to provide that a civil penalty may be administratively imposed by the Dep't of Forestry and Fire Protection.]

C.C.P. 338.1
(Amended)
(Ch. 141) (AB 1980)
(Effective 1/1/2019)

Extends, from one year to five years, the statute of limitations for bringing an action for a violation relating to the Aboveground Petroleum Storage Act (APSA: H&S 25270–25270.13) by adding violations of this Act to the list of hazardous material and underground hazardous substance storage violations in the Health and Safety Code for which an action for civil penalties or punitive damages may be brought within five years after discovery by the agency bringing the action. The purpose of the amendment is to give investigators and prosecutors sufficient time to initiate civil enforcement actions for APSA violations.

Fish & Game C. 2080
(Amended)
(Ch. 329) (SB 473)
(Effective 1/1/2019)

Adds public agencies to this section that prohibit persons from taking, possessing, purchasing, selling, importing, or exporting, an endangered or threatened species, in order to clarify that the California Endangered Species Act applies to public agencies.

[The definition of "person" in Fish & Game C. 67 is "any natural person or any partnership, corporation, limited liability company, trust, or other type of association."]

Fish & Game C. 12000
(Amended)
Fish & Game C. 12012.5
(New)
(Ch. 189) (AB 2369)
(Effective 1/1/2019)

Creates a separate misdemeanor penalty, in new Fish & Game C. 12012.5, to increase the punishment for a person who holds a commercial fishing license or who operates a commercial passenger fishing boat, and who unlawfully takes a fish for commercial purposes within a marine protected area, or who knowingly facilitates another person's fishing activity within the marine protected area. Provides that this is a misdemeanor crime punishable by up to one year in jail and/or by a fine of between $5,000 and $40,000 (instead of being punishable pursuant to existing Fish & Game C. 12000 by up to six months in jail and/or by a fine of up to $1,000.)

Provides that a second or subsequent violation within 10 years of a prior violation that resulted in a conviction is punishable by up to one year in jail and/or by a fine of between $10,000 and $50,000. Also permits the Dep't of Fish & Wildlife to suspend the violator's license.

Provides that notwithstanding P.C. 802 (providing, generally, for a one-year statute of limitations for misdemeanor crimes) prosecution for a violation of new Fish & Game C. 12012.5 must be commenced within three years of the commission of the offense.

[Uncodified Section One of this bill sets forth the Legislature's declaration that existing penalties are insufficient to deter the poaching of fish in marine protected areas.]

Pub. Res. C. 42270
Pub. Res. C. 42271
(New)
(Ch. 576) (AB 1884)
(Effective 1/1/2019)

Creates new Chapter 5.2 in Part 3 of Division 30 of the Public Resources Code entitled "Single-Use Plastic Straws."

New Pub. Res. C. 42271 prohibits a full-service restaurant from providing a single-use plastic straw to a consumer unless the consumer requests it. A first and second violation will result in a notice of violation (with no penalty, apparently), and a third or subsequent violation is an infraction punishable by a fine of $25 for each day the restaurant is in violation, up to no more than $300 annually. Provides that an "enforcement officer" shall enforce this new straw law.

New Pub. Res. C. 42270 contains definitions of "consumer," "enforcement officer," "single-use plastic straw," and "full-service restaurant." An "enforcement officer is defined in terms of existing H&S 113774 (a director, agent, or environmental health specialist appointed by the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.)

A "full-service restaurant" is defined as an establishment whose primary business is serving food, where the consumer's order is taken after the consumer has been seated, where food and beverages are delivered directly to the consumer, and where the check is delivered directly to the consumer at the assigned seating area.

Provides that a city or county may adopt and implement an ordinance that would further restrict a full-service restaurant from providing a single-use plastic straw to a consumer.

Evidence Code

Evidence C. 177
(Amended)
(Ch. 70) (AB 1934)
(Effective 1/1/2019)

Revises the definition of "dependent person" to clarify that a person qualifies as a dependent person regardless of whether he or she lives independently.

[According to the legislative history of this bill, its purpose is to ensure that law enforcement, social workers, dependent persons themselves and their families understand that dependent persons are protected by laws pertaining to dependent persons even if they live independently.]

Evidence C. 351.3
Evidence C. 351.4
(New)
(Ch. 12) (SB 785)
(Effective 5/17/2018)

Restricts the disclosure of a person's immigration status in open court in both criminal (new Evidence C. 351.4) and civil (new Evidence C. 351.3) cases. Both sections prohibit the disclosure, in open court, of a person's immigration status by a party or his or her attorney, unless a judge first decides in an in camera hearing that immigration status is admissible. Provides that this prohibition does *not* apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense, does *not* limit discovery in a criminal action, and does *not* prohibit a person or his or her attorney from voluntarily revealing immigration status to the court.

Note that the use of the phrase "immigration status" appears to include both *illegal* and *legal* immigration status. Note also that Evidence C. 351.4 does not limit the type of open court sessions it applies to, and therefore it applies to all types of open court criminal sessions (e.g., bail hearings, trials, preliminary hearings, guilty/no contest pleas, motions to suppress evidence, etc.). Note that the phrase "evidence of a person's immigration status" is not limited to defendants. It applies to all persons, including defendants, victims, and witnesses. Therefore, a defense attorney who wants to introduce evidence or question a victim or witness about his or her immigration status at trial is required to get court permission first. And a prosecutor who wants to argue in open court at a bail hearing that the defendant's illegal status in the U.S. makes him or her more likely to flee, must obtain court permission first.

Uncodified Section 4 of the bill provides that "This act does not alter a prosecutor's existing obligation to disclose exculpatory evidence."

continued

Both sections are scheduled to sunset on January 1, 2022.

[Article I, section 28(f)(2) of the California Constitution contains California's "Right to Truth-in-Evidence" provision, which states that relevant evidence cannot be excluded in a criminal proceeding, or in a juvenile proceeding involving a crime, **except** by a statute enacted by a 2/3 vote of both houses of the Legislature. SB 785 received more than a 2/3 vote in both the Senate and the Assembly.]

Evidence C. 953
(Amended)
(Ch. 475) (AB 1290)
(Effective 1/1/2019)

For purposes of the lawyer-client privilege, provides that a guardian or conservator that has an actual or apparent conflict of interest with the client, is *not* a holder of the lawyer-client privilege. Previously, this section provided that a guardian or conservator of a client **is** the holder of the lawyer-client privilege if a client has a guardian or conservator. This amendment adds an exception to that general principle by providing that if the guardian or conservator has an actual or apparent conflict of interest with the client , then the guardian or conservator does **not** hold the lawyer-client privilege.

[According to the legislative history of this bill, the concern is about situations where there is a dispute between the conservator or guardian and the client, such as when a conserved client seeks to remove a conservator or terminate a conservatorship.]

Evidence C. 1010
(Amended)
(Ch. 389) (AB 2296)
(Effective 1/1/2019)

Expands the definition of "psychotherapist" to include a person registered as an associate marriage and family therapist who is under the supervision of a *licensed professional clinical counselor*. Previously, in order to qualify as a psychotherapist, an associate marriage and family therapist had to be under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry. Being supervised by a licensed professional clinical counselor is now added.

Evidence C. 1035.2
(Amended)
(Ch. 123) (AB 1896)
(Effective 1/1/2019)

Specifically includes within the definition of "sexual assault counselor," for purposes of the Sexual Assault Counselor-Victim Privilege (Evidence C. 1035–1036.2), counselors who are operating on the campus of a public or private institution of higher education whose primary purpose is rendering advice or assistance to victims of sexual assault. Continues to require that a sexual assault counselor complete a training program in the counseling of sexual assault victims *and* meet one of the following requirements: is a psychotherapist, has a master's degree in counseling, has one year of counseling experience with at least six months in rape crisis counseling, or has 40 hours of training in specified areas (law, medicine, societal attitudes, crisis intervention, role playing, referral services, sexuality), and is supervised by a qualified counselor.

The legislative history of the bill states that there is "significant confusion and divided opinions" about whether the sexual assault counselor-victim privilege extends to on-campus sexual assault counselors. This amendment appears to be a clarification of existing law rather than a change in the law. Uncodified Section One of the bill states that there is uncertainty among practicing sexual assault counselors as to whether the privilege extends to counselors on college campuses and that the intent of this bill is to remove uncertainty and to provide that sexual assault counselors who practice at college campuses have always been included in this privilege.

Evidence C. 1122
(Amended)
Evidence C. 1129
(New)
(Ch. 350) (SB 954)
(Effective 1/1/2019)

Creates new Evidence C. 1129 to require an attorney representing a client participating in mediation or a mediation consultation, to provide the client with a printed disclosure containing the mediation confidentiality restrictions set forth in existing Evidence C. 1119. Also requires the attorney to obtain from the client a printed acknowledgment signed by the client stating that he or she has read and understands the confidentiality restrictions. New Evidence C. 1129 specifies in detail what information the mediation confidentiality disclosure should contain.

Existing Evidence C. 1122 (specifying when a mediation document is admissible or may be disclosed) is amended to provide that a mediation confidentiality disclosure document may be used in an attorney disciplinary proceeding to determine whether the attorney complied with new Evidence C. 1129.

continued

[Pursuant to existing Evidence C. 1119, in general, anything said or admitted during mediation, or any writing prepared for mediation, is not admissible or subject to disclosure or discovery.]

Evidence C. 1162
(New)
(Ch. 27) (AB 2243)
(Effective 1/1/2019)

Provides that evidence that a victim of, or witness to, extortion (P.C. 519), stalking (P.C. 646.9), or a violent felony defined in P.C. 667.5, has engaged in an act of prostitution "at or around the time" he or she was the victim of or witness to the specified crime is **not** admissible in a **separate** prosecution of that victim or witness to prove his or her criminal liability for the act of prostitution.

According to the legislative history, the purpose of this bill is to give immunity from prosecution for prostitution, to both "sex workers" and "johns." The goal is to have sex workers not be afraid to report the violent crime they may be a victim of, or a witness to, in their line of work, and to encourage johns to cooperate and testify because they may be the only witness to a crime against a sex worker. The legislative history cites the San Francisco District Attorney's Office policy of not prosecuting sex workers for prostitution and states that sex workers "may be unaware or skeptical that they will be granted immunity in exchange for furnishing evidence and or testimony" about more serious crime, and thus a codification of this immunity is necessary. Note, however, that the language of this new law does not require the sex worker or john to actually cooperate with law enforcement, or provide evidence, or testify, in order to get the benefits of it. The language appears to be written in such a way (perhaps unintentionally) that it is simply the prostitute's or john's status as a victim or witness to a particular type of crime that triggers new Evidence C. 1162. Presumably, there would have to be at least some credible evidence that a specified crime was actually committed, so that a spur-of-the-moment false claim that the commission of a specified crime was witnessed would not trigger immunity. Oddly, the legislative history makes no mention of long-standing immunity provisions in existing P.C. 1324.1 (misdemeanors) or P.C. 1324 (felonies), which provide for immunity from prosecution in exchange for testimony.

Evidence C. 1294
(Amended)
(Ch. 64) (AB 1736)
(Effective 1/1/2019)

Expands in two ways the types of prior inconsistent statements that are admissible when a witness is unavailable and his or her former testimony is admitted pursuant to Evidence C. 1291:

1. adds audio recorded statements to the types of admissible inconsistent statements (video recordings and transcripts); and
2. adds inconsistent statements properly admitted at a conditional examination to the types of admissible inconsistent statements (inconsistent statements properly admitted at a preliminary hearing or trial).

Thus, if a witness is not available at trial and either was not available for a preliminary hearing or did not testify at the preliminary hearing, but did testify at a conditional examination and made inconsistent statements, those inconsistent statements may now be admitted at trial.

Provides that "conditional examination" has the same meaning as in existing P.C. 1335–1345.

[P.C. 1335 and P.C. 1336 permit a conditional examination to be held in cases where there is evidence that the life of a witness is in jeopardy; where a material witness is about to leave the state, or is so sick or infirm that there is reasonable apprehension that he or she will not be able to attend the trial; where a material witness is a person age 65 or older, or a dependent adult; or, in a domestic violence or human trafficking case where there is evidence that the defendant is dissuading or preventing the witness from cooperating or testifying.]

[Keep in mind that because this amendment is a procedural change, it applies to every case pending at the time it becomes effective (i.e., every case pending on January 1, 2019), even if the crime(s) occurred *before* 2019. See *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 299–300 (holding that the changes made by Proposition 115 in 1990 that governed the conduct of trials applied prospectively to a trial occurring after the law's effective date, regardless of when the underlying crime was committed.]

Family Code

Family C. 4324.5
(Amended)
(Ch. 850) (SB 1129)
(Effective 1/1/2019)

Adds a criminal conviction of "a domestic violence felony" to those convictions (the specified types of rape, sodomy, oral copulation, and sexual penetration listed in paragraphs (3), (4), (5), (11), and (18) of the P.C. 667.5(c) violent felony list) committed by one spouse against the other spouse that affect the award of spousal support and attorney's fees, and the division of community property, in a divorce proceeding. Continues to provide that a specified conviction within five years before the filing of a divorce petition prohibits the court from making an award of spousal support to the convicted spouse from the injured spouse, prohibits the injured spouse from being required to pay any attorney's fees of the convicted spouse out of the injured spouse's separate property, and entitles the injured spouse to 100 percent of the community property interest in the retirement and pension benefits of the injured spouse.

Provides that the amendments made by this bill apply to convictions that occur on or after January 1, 2019. Thus, a domestic violence felony conviction will trigger this section if the conviction occurs on or after January 1, 2019, even if the crime occurs before 2019.

Previously, an act of domestic violence (felony or misdemeanor) applied under existing Family C. 4325 to create a rebuttable presumption that an award of spousal support to the abusive spouse should not be made. This bill limits Family C. 4325 to *misdemeanor* convictions related to domestic violence and adds domestic violence felonies to this section. See below for more on Family C. 4325.

Defines "domestic violence felony" as a felony offense for an act of abuse, as described in Family C. 6203, perpetrated by one spouse against the other spouse. Family C. 6203 defines "abuse" as intentionally or recklessly causing or attempting to cause bodily injury; sexual assault; placing a person in reasonable apprehension of imminent serious bodily injury to that person or another; or engaging in any behavior that has been or could be enjoined pursuant to Family C. 6320 (e.g., harassment, annoying telephone calls, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace). Family C. 6203 also provides that "abuse" is not limited to the actual infliction of physical injury or assault.

continued

Thus, the types of domestic violence felonies that could trigger this section's provisions include P.C. 273.5, 245, 422, 594, and any sexual assault regardless of whether it fits the paragraphs specified above in P.C. 667.5(c), etc.).

Adds that if a convicted spouse presents documented evidence of the convicted spouse's history as a victim of a violent sexual offense (as listed above) or domestic violence as defined in Family C. 6211, perpetrated by the other spouse, the court may determine that one or more of the provisions does not apply (i.e., that the spousal award, attorney's fees and/or community property provisions do not apply.)

Family C. 6211 defines "domestic violence" as abuse against a spouse, former spouse, cohabitant, former cohabitant, person with whom the perpetrator is having or has had a dating or engagement relationship, a person with whom the perpetrator has a child, and any other person related by consanguinity (blood) or affinity (marriage) within the second degree. And there is no specified limit on how recent the conduct must be, so it appears that a convicted spouse could produce evidence of abuse going back farther than five years and that those acts could have occurred even before the marriage, such as when the spouses were dating, engaged, or living together.

Family C. 4325
(Amended)
(Ch. 850) (SB 1129)
(Effective 1/1/2019)

Moves criminal convictions for a domestic violence *felony* to Family C. 4324.5 (see above) so that a spouse convicted of a domestic violence felony is prohibited from receiving spousal support from the injured spouse and is prohibited from receiving any community property interest in the injured spouse's retirement and pension benefits.

Retains misdemeanor convictions in this section, retains the rebuttable presumption that a spouse convicted of a specified misdemeanor will not be awarded spousal support, and expands the presumption to attorney's fees.

Provides that a conviction for a domestic violence misdemeanor or a "criminal conviction for a misdemeanor that results in a term of probation pursuant to Penal Code Section 1203.097" perpetrated by one spouse against the other spouse within five years before the filing of a divorce petition or during the course of the dissolution proceeding

continued

creates a rebuttable presumption that an award of spousal support to the convicted spouse from the injured spouse is prohibited and that the injured spouse shall not be required to pay any attorney's fees of the convicted spouse out of the injured spouse's separate property.

Adds that the court is authorized to determine, on a case-by-case basis, that the injured spouse is entitled to up to 100 percent of the community property interest in his or her own retirement and pension benefits, and sets forth a number of items for the court to consider.

Defines "domestic violence misdemeanor" as a misdemeanor offense for an act of abuse as described in Family C. 6203(a)(1) to (a)(3) (intentionally or recklessly causing or attempting to cause bodily injury; sexual assault; or placing a person in reasonable apprehension of imminent serious bodily injury).

Thus, the types of domestic violence misdemeanors that could trigger this section's provisions include misdemeanor violations of P.C. 243(e), 273.5, 245, 422, any sexual assault, or any other misdemeanor perpetrated by one spouse upon the other that contains any of the elements in Family C. 6203(a)(1) to (a)(3).

Retains the provision authorizing the court to consider evidence of the convicted spouse's history as a victim of domestic violence perpetrated by the other spouse.

Continues to provide that the rebuttable presumption created in this section may be rebutted by a preponderance of the evidence.

Provides that the changes to this section made by this bill apply only to convictions that occur on or after January 1, 2019 (even if the crime occurred before 2019). Therefore, any new provisions in this section (e.g., attorney's fees and retirement/pension benefits) apply only to convictions occurring on or after January 1, 2019. But any convictions occurring before January 1, 2019, would still be subject to the pre-January 1, 2019 version of this section providing for a rebuttable presumption against awarding spousal support to a convicted spouse.

Family C. 6300
Family C. 6326
Family C. 6340
(Amended)
(Ch. 219) (AB 2694)
(Effective 1/1/2019)

Prohibits an ex parte domestic violence restraining order from being denied solely because the other party was not provided with notice.

Provides that if at the time of the hearing for a permanent domestic violence restraining order, the court determines that, after diligent efforts the petitioner has not been able to accomplish personal service and there is reason to believe the restrained party is evading service, the court may permit an alternative method of service. Alternative methods of service include, but are not limited to:

1. service by publication pursuant to C.C.P. 415.50 (e.g., notice published in a newspaper); or
2. service by first-class mail sent to the respondent at the respondent's most current address available to the court; or
3. service by delivering a copy of the pleadings and orders at the respondent's home or workplace, pursuant to C.C.P. 415.20–415.40 (e.g., leaving a copy with a member of the respondent's household or with a person in charge at the respondent's workplace).

Requires the court, if it permits an alternative method of service, to grant a continuance to allow for that alternative service.

Family C. 6380
(Amended)
(Ch. 89) (SB 1089)
(Effective 1/1/2019)

Adds a new subdivision (j) providing that all protective orders subject to transmittal to the California Law Enforcement Telecommunications System (CLETS) are required to be so transmitted, and provides that this is declaratory of existing law.

Uncodified Section One of this bill provides that the Legislature has become aware of a practice where parties seek to have the court enter a stipulated protective order that is not transmitted to CLETS. These orders are referred to as "non-CLETS restraining orders." The Legislature declares its intent that all protective orders subject to transmittal to CLETS are required to be so transmitted.

[The legislative history of this bill cites an unpublished case, *In re Marriage of Carlisle* (9/29/2017) (C079547) (3DCA), a case in which the husband argued that the trial court should have honored the parties' request to stipulate to a civil,

continued

non-CLETS restraining order, instead of issuing a domestic violence restraining order. The appellate court found no evidence that the parties had reached such a stipulation and went on to find that there is no statutory authority for the issuance of a non-CLETS restraining order. The appellate court stated that domestic violence restraining orders and other types of orders, such as civil harassment orders issued pursuant to C.C.P. 527.6, must be entered into CLETS.]

Family C. 6930
(New)
(Ch. 1003) (AB 3189)
(Effective 1/1/2019)

Provides that a minor age 12 or older who states he or she is injured as a result of intimate partner violence may consent to medical care and the collection of medical evidence. Defines "inmate partner violence" as an intentional or reckless infliction of bodily harm that is perpetrated by a person with whom the minor has or has had a sexual, dating, or spousal relationship.

Provides that this new section does not apply to a case where the minor is a victim of rape or sexual assault. Instead, existing Family C. 6927 (rape) and 6928 (sexual assault) apply. Both sections permit a minor who is a victim of rape or sexual assault to consent to medical care and the collection of medical evidence.

Provides that a health practitioner who believes the injuries require a report pursuant to P.C. 11160 (requiring healthcare workers to report to law enforcement wounds inflicted by firearm or by assaultive or abusive conduct) must inform the minor and attempt to contact the minor's parent or guardian. Provides that a parent or guardian is not required to be notified if the minor's parent or guardian is reasonably believed to have committed intimate partner violence on the minor. [This provision does not make much sense in this context. The language about parents or guardians was taken from Family C. 6928 (sexual assault), which provides that a parent or guardian does not need to be contacted if it is reasonably believed that the minor's parent or guardian committed the sexual assault on the minor. Since intimate partner violence is defined in terms of bodily harm caused by a person with whom a minor has or has had a sexual, dating, or spousal relationship, it is unlikely that a parent or guardian would qualify as an "intimate partner."]

Family C. 7823
(Amended)
(Ch. 83) (AB 2792)
(Effective 1/1/2019)

Adds that a finding that a parent committed severe sexual abuse as described in W&I 361.5(b)(6) is prima facie evidence that the parent has neglected or cruelly treated the child.

[Pursuant to Family C. 7823, the neglectful or cruel treatment of a child by a parent is grounds for terminating parental rights. W&I 361.5(b)(6) provides that reunification services need not be provided in a juvenile dependency case if the court finds clear and convincing evidence of severe sexual abuse. Pursuant to this amendment, a finding of severe sexual abuse in a juvenile dependency case may be used in Family Court to terminate parental rights.]

.

Food and Agricultural Code

Food & Ag. C. 14991
Food & Ag. C. 15042
Food & Ag. C. 15056
Food & Ag. C. 15071
(Amended)
Food & Ag. C. 15071.1
Food & Ag. C. 15071.3
Food & Ag. C. 15071.4
(New)
Food & Ag. C. 15071.5
Food & Ag. C. 15075
(Amended)
Food & Ag. C. 15081
(Repealed)
Food & Ag. C. 15082
(New)
Food & Ag. C. 15091
Food & Ag. C. 15092
(Amended)
(Ch. 683) (SB 668)
(Effective 1/1/2019)

Eliminates misdemeanor and infraction crimes for violations of commercial feed laws and instead permits the Dep't of Food and Agriculture to levy an administrative penalty of up to $5,000 for a first violation and a minimum penalty of $5,000 or more for each subsequent violation. Permits the Secretary of Food and Agriculture to issue a warning notice in lieu of a penalty if the violation is minor or unintentional. Sets forth procedures for an administrative hearing. Previously, these violations were misdemeanor or infraction crimes, and the Secretary of Food and Agriculture had the authority to levy a civil penalty for a commercial feed license violation of up to $500. The Secretary may now levy an administrative penalty for a violation of any provision of the Commercial Feed chapter (Food & Ag C. 14901–15103).

[According to the legislative history of the bill, the authority to prosecute all commercial feed violations was transferred to the Dep't of Food and Agriculture because district attorneys have very full schedules and therefore many violations of the Food and Agricultural Code do not get prosecuted.]

.

Government Code

Gov't C. 6205
Gov't C. 6205.5
Gov't C. 6206
Gov't C. 6208.5
Gov't C. 6209.5
Gov't C. 6209.7
(Amended)
(Ch. 517) (SB 1320)
(Effective 1/1/2019)

Adds victims of elder or dependent adult abuse (as defined in either P.C. 368 or W&I 15610.07) to those victims (domestic violence, sexual assault, stalking, or human trafficking) who may apply to participate in the Secretary of State's Safe at Home address confidentiality program, in which mail is delivered to a post office box and then forwarded by the Secretary of State to the participant.

[Existing Gov't C. 6215–6216 continue to permit reproductive health care workers to apply to participate in the address confidentiality program.]

Gov't C. 6254
(Amended)
(Ch. 960) (AB 748)
(Effective 7/1/2019)

Amends the California Public Records Act, beginning July 1, 2019, to expand public access to a video or audio recording (e.g., a law enforcement body-worn camera recording) that relates to a critical incident. Provides that a recording relates to a critical incident if it depicts the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury. Provides that "peace officer" does not include a peace officer employed by CDCR. Permits an agency to provide greater public access than the minimum standards set forth in this bill.

Withholding For Up to 45 Days
Provides that a video or audio recording related to a critical incident may be withheld for up to 45 days during an active criminal or administrative investigation if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. Requires an agency that withholds disclosure during this 45-day period to provide in writing to a requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and the estimated date for disclosure.

Withholding for Up to One Year or Beyond
Provides that a video or audio recording may be withheld from disclosure for up to one year if the agency demonstrates that disclosure would substantially interfere with the investigation (i.e., the same standard for withholding disclosure during the first 45 days).

continued

Permits delaying disclosure beyond one year if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. Requires an agency that delays disclosure beyond 45 days or beyond one year to provide in writing to a requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure, and to provide the estimated date for disclosure. Requires an agency to reassess withholding and notify the requester every 30 days.

Privacy and Redaction
Provides that if an agency demonstrates, on the facts of a particular case, that the public interest in withholding a recording clearly outweighs the public interest in disclosure because release would violate the reasonable expectation of privacy of a person depicted in the recording, the agency shall provide in writing to a requester the specific basis for the expectation of privacy and the public interest served by withholding the recording, and may use redaction technology (such as blurring or distorting images or audio) to obscure the portions of the recording that protect a privacy interest.

Permits an agency to withhold the recording altogether if the agency demonstrates that the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction. But requires prompt disclosure, regardless of privacy issues, to the subject of the recording or his or her authorized representative; to the parent or legal guardian of a minor subject; or to the heir, beneficiary, designated immediate family member, or authorized legal representative of a deceased subject. However, if disclosure would substantially interfere with an active criminal or administrative investigation, the agency must provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation. Note that the phrase "and provide the video or audio recording" in subdivision (f)(4)(B)(iii) appears to be a drafting error. It makes no sense to direct the providing of a video or audio recording in the same sentence where the agency is required to explain in writing why it has decided to **not** disclose the recording.

continued

[P.C. 832.7 is amended by SB 1421 effective 1/1/2019 to require local and state police agencies to make available for public inspection records, including audio and video evidence, of police use of force incidents as well as incidents involving sexual misconduct and dishonesty relating to a crime, such as perjury or concealing or falsifying evidence. See the Penal Code Section of this Digest for more information.]

Gov't C. 7284.6
(Amended)
(Ch. 8) (AB 110)
(Effective 3/13/2018)

Amends the "California Values Act" (Gov't C. 7284–7284.12), to clarify that the prohibition on law enforcement agencies contracting with the federal government to house non-citizens as federal detainees applies only for purposes of *civil* immigration custody. Previously this section prohibited contracts to house "federal detainees." (This is consistent with existing Gov't C. 7310 which prohibits cities, counties, and local law enforcement agencies from entering a new contract or renewing an existing contract with the federal government to house non-citizens for purposes of *civil* immigration custody.)

[The California Values Act contains a number of provisions that prohibit law enforcement from assisting with or cooperating in immigration enforcement. According to *www.ice.gov*, civil immigration enforcement is an administrative action involving the arrest of a non-citizen for a civil violation of the immigration laws, which is adjudicated by an immigration judge or through other administrative processes. According to ICE figures, a majority of these arrestees have criminal convictions, are pending criminal charges, or are ICE fugitives.]

Gov't C. 7480
(Amended)
(Ch. 288) (AB 3229)
(Effective 1/1/2019)

Adds a special agent with the DOJ to the list of persons (police, sheriff, district attorney) who may request and obtain account records from a bank, credit union, or savings association, after certifying that a crime report has been filed that involves the fraudulent use of drafts, checks, or access cards, or with the consent of the account holder.

[Gov't C. 7480 continues to permit a county adult protective services office or a long-term care ombudsman, when investigating elder or dependent adult financial abuse, to request and obtain bank, credit union, or savings association records.]

continued

[According to the legislative history of this bill, this amendment will permit DOJ agents to use Gov't C. 7480 to obtain bank records rather than having to write search warrants, which will be especially useful for DOJ's Bureau of Gambling Control, which commonly investigates counterfeit checks passed at tribal casinos and card rooms throughout California.]

Gov't C. 8558
(Amended)
(Ch. 557) (SB 532)
(Effective 1/1/2019)

Adds cyberterrorism to the list of disasters (fire, flood, earthquake, storm, epidemic, riot, drought, sudden energy shortage, plant or animal infestation or disease) that constitute a state of emergency or a local emergency. [This section is part of the California Emergency Services Act. Existing Gov't C. 8625 empowers the Governor to declare a state of emergency if circumstances described in Gov't C. 8558 exist. Existing Gov't C. 8630 authorizes a local emergency to be proclaimed by the governing body of a city or county.]

Gov't C. 9149.30
Gov't C. 9149.31
Gov't C. 9149.32
Gov't C. 9149.33
Gov't C. 9149.34
Gov't C. 9149.35
Gov't C. 9149.36
(New)
(Ch. 2) (AB 403)
(Effective 2/5/2018)

Creates new Article 11 in Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code entitled "Legislative Employee Whistleblower Protection Act."

This Act establishes protections for a state legislative employee (which includes a volunteer, intern, fellow, or applicant) who reports legal and ethical violations, including sexual harassment, so that the report may be made without fear of retribution.

Creates two new misdemeanor crimes:

1. Gov't C. 9149.33(a): A Member of the Legislature or a legislative employee directly or indirectly using or attempting to use his or her official authority or influence for the purpose of interfering with the right of a legislative employee to make a protected disclosure. Pursuant to Gov't C. 9149.33(b), this is a misdemeanor crime, punishable by up to one year in jail and a fine up of up to $10,000.
2. Gov't C. 9149.34: An individual intentionally retaliating against a legislative employee for having made a protected disclosure. Punishable by up to one year in jail and a fine of up to $10,000.

continued

Defines "protected disclosure" as a communication by a legislative employee that is made in good faith alleging that a member of the Legislature or a legislative employee engaged in, or will engage in, activity that may constitute a violation of any law, including sexual harassment, or a violation of a legislative code of conduct; and that is made to a specified Senate or Assembly Committee, a state or local law enforcement agency, or a state agency authorized to investigate potential violations of state law.

Also provides for civil damages and attorney's fees/costs as a remedy. Provides for punitive damages if the acts of the offending party are proven to be fraudulent, oppressive, or malicious.

Gov't C. 12950
Gov't C. 12950.1
(Amended)
(Ch. 956) (SB 1343)
(Effective 1/1/2019)

Beginning January 1, 2020, expands the pool of employers required to provide sexual harassment training for employees, by reducing the threshold number of employees that triggers this training requirement. Also adds a requirement that *non*-supervisory employees be trained. Employers with five or more employees are required to provide at least one hour of sexual harassment training and education to *non*-supervisory employees and at least two hours of training to supervisory employees, every two years. Previously, this section required employers with 50 or more employees to provide two hours of sexual harassment training for supervisory employees and had no requirement for non-supervisory employees. Requires the Dep't of Fair Employment and Housing to develop or obtain online training courses on the prevention of sexual harassment in the workplace and permits both supervisory and non-supervisory employees to do the training online. Requires that the online training contain an interactive feature that requires the viewer to respond periodically to a question in order for the training course to continue. Also requires training for seasonal and temporary employees.

[Existing Gov't C. 12926 defines employer in terms of private and governmental employers: a person employing five or more persons, the state or any political or civil subdivision of the state, and cities, except religious associations not organized for profit.]

Gov't C. 12950.3
(New)
(Ch. 842) (SB 970)
(Effective 1/1/2019)

Requires hotels and motels, by January 1, 2020, to provide at least 20 minutes of classroom or interactive training and education regarding human trafficking awareness to employees who are likely to interact or come into contact with victims of human trafficking. After January 1, 2020, requires training every two years for employees who are likely to interact or come into contact with victims of human trafficking. Requires new employees to undergo training within six months.

Defines employees who are likely to interact or come into contact with human trafficking victims as including receptionists, housekeepers, employees who help customers move their belongings, and employees who drive customers.

Gov't C. 13293.5
(New)
(Ch. 37) (AB 1817)
(Effective 6/27/2018)

Creates these new misdemeanor crimes relating to the Dep't of Finance and its authority to examine the records of state agencies and conduct audits:

1. failing or refusing to permit the examination of, access to, or reproduction of records, files, documents, accounts, reports, correspondence, cash drawers, or cash by the Dep't of Finance, or in any way interfering with an examination;
2. interfering, intending to deceive or defraud, or obstructing the Dep't of Finance in its performance of an audit, evaluation, investigation, or review;
3. altering or changing records, documents, accounts, reports, or correspondence prior to or during an audit, evaluation, investigation, or review; or
4. distributing, releasing, or failing to safeguard confidential draft documents exchanged between the Dep't of Finance and the entity subject to audit, evaluation, investigation, or review, prior to the release of the Dep't of Finance's final report and without its express permission.

Provides that these misdemeanor crimes are punishable by up to six months in jail and/or by a fine of up to $1,000.

Gov't C. 13953
(Amended)
(Ch. 38) (AB 1824)
(Effective 6/27/2018)

Permits the California Victim Compensation Board to grant an extension for the filing of an application for compensation to victims and derivative victims of the "Golden State Killer" (also known as the "East Area Rapist"). Authorizes the Board to consider whether a victim or derivative victim "incurs emotional harm or pecuniary loss as a result of the identification of" the Golden State Killer. Defines "emotional harm" as including, but not limited to, harm incurred while preparing to testify. Provides that this new paragraph sunsets on December 31, 2019. [The Golden State Killer was arrested in 2018 and is charged with committing numerous murders and sexual assaults many years ago.]

(Amended)
(Ch. 983) (SB 1232)
(Effective 1/1/2019)

Further amends Gov't C. 13953 to extend the time limit for a crime victim to file an application for compensation with the Victim Compensation Board: *from* three years after a victim reaches age 18, *to* three years after a victim reaches age 21. Retains the other existing time frames in the statute for filing an application: within three years of the date of the crime or within three years of the time the victim knew or could have discovered that an injury or death was sustained as a result of a crime. Also retains a sexual assault victim's ability to file an application any time before the victim's 28th birthday.

Gov't C. 13962
(Amended)
(Ch. 161) (AB 1639)
(Effective 1/1/2019)

The Healing For All Act of 2017.

Adds a sentence requiring the California Victim Compensation Board (Cal VCB) to conduct outreach to local law enforcement agencies about their duties regarding victim compensation. (This statute already requires Cal VCB to publicize its victim compensation program through law enforcement agencies, victim centers, hospitals, medical providers, counseling providers, etc., and to provide compensation application forms to law enforcement agencies and victim centers. It also already provides that it is the duty of every local law enforcement agency to inform crime victims about the provisions of Gov't C. 13950–13966 (Indemnification of Victims of Crime) and the existence of victim centers.)

Requires every local law enforcement agency to annually provide to the Cal VCB, contact information for the agency's Victims of Crime Liaison Officer designated pursuant to Section 649.36 of Title 2 of the California Code of Regulations. (Existing 2 C.C.R. 649.36 requires every

continued

local law enforcement agency to designate a Victims of Crime Liaison Officer to devise and implement written procedures for notifying crime victims and their families about the Restitution Fund administered by Cal VCB and for providing forms for victims to seek reimbursement for losses due to crime.)

Requires Cal VCB to annually make available to liaison officers one hour of training on victim compensation, and materials to educate liaison officers and publicize the program within their jurisdictions.

Requires Cal VCB to affirm that access to information about victim compensation and/or an application for victim compensation shall not be denied on the basis of a victim's membership in, or association with, a gang, or on the basis of a victim's designation as a suspected gang member or gang associate in a shared gang database, as defined in P.C. 186.34. Also requires Cal VCB to affirm that access to information about victim compensation and/or an application for victim compensation shall not be denied on the basis of a victim's "documentation or immigration status."

Uncodified Section Two of this bill contains the Legislature's declarations and findings that it is the intention of Cal VCB to assist victims of qualified crime in obtaining compensation for the pecuniary losses they suffer as s direct result of criminal acts; that victims should be encouraged to access victim compensation services regardless of gang membership, affiliation, or association, and regardless of documentation or immigration status; that providing resources to victims decreases trauma, suffering, and the resulting physical and mental health costs; and that "providing treatment for trauma caused by crime may interrupt the cycle of victimization."

[Note: Existing Gov't C. 13956 specifies disqualifiers for receiving victim compensation through Cal VCB, such as the victim being required to register as a sex offender or the victim being in custody or under supervision for a violent felony (P.C. 667.5(c)). It does not specify gang membership, gang affiliation, designation in a shared gang database, or immigration status as a disqualifier.]

Gov't C. 25132
(Amended)
(Ch. 970) (AB 2598)
(Effective 1/1/2019)

Increases the fine amount that a county may assess for local building and safety code violations and creates a new fine for building and safety code violations on commercial property. Keeps fine amounts for infraction violations and event permit violations the same.

For building and safety code violations, increases the maximum fine from $100 to $130 for a first violation, from $500 to $700 for a second violation of the same ordinance within a year, and from $1,000 to $1,300 for a third or subsequent violation of the same ordinance within one year of the first violation.

Creates a new fine of up to $2,500 for each violation of the same ordinance within two years of the first violation, if the property is a commercial property with a building on it, and the violation is due to the failure of the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

Requires counties to establish a process for granting a hardship waiver to reduce the amount of the fine for a second or third infraction or a second or third building code violation, if the violator can show that he or she made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would be an "undue financial burden."

This bill also amends Gov't C. 36900 to increase city building and safety code fines in the same way. See below.

[According to the legislative history of this bill, counties and cities are struggling with abandoned buildings and the refusal of owners to maintain vacant properties. It has also been many years since building and safety code fines have been updated to reflect inflation.]

Gov't C. 27521
(Amended)
(Ch. 936) (SB 1163)
(Effective 1/1/2019)

Provides that an agency tasked with exhuming a body or skeletal remains of a deceased person who has suffered significant deterioration or decomposition, where there is a reasonable basis for suspecting the death was the result of a criminal act, *may* perform the exhumation in consultation with a board-certified forensic pathologist certified by the American Board of Pathology. Also permits the forensic pathologist to suggest that an anthropologist be retained

continued

in order to conduct the exhumation "with the highest dignity for potential victims, the least damage to a potential crime scene, and the best chance for victim recovery and identification."

Provisions in this section relating to taking appropriate samples of tissue and bone from an unidentified body or human remains before cremation or burial, are reorganized into different subdivisions. Added is a requirement that the samples obtained, the method of procurement or dissection of samples, and the handling, processing, and storage of samples be within the generally accepted standards of forensic pathology and death investigation.

[According to the legislative history of the bill, the purpose for involving a forensic pathologist is to maximize the recovery and protection of human remains in order to increase the chances of identification. The original version of the bill required consultation with a board-certified forensic pathologist during an exhumation and required that all post-mortem examinations and autopsies conducted on unidentified human remains be conducted only by an attending physician and surgeon, or a chief medical officer who is a board-certified forensic pathologist. The final version of the bill eliminated these requirements.]

Gov't C. 27771
(Amended)
(Ch. 244) (SB 10)
(Effective 1/1/2019)

Adds "reports prepared pursuant to Section 1320.15 of the Penal Code" to the list of duties of chief probation officers. P.C. 1320.15 is a part of SB 10, which changes California's bail system from a money bail system to a risk-based assessment system, beginning October 1, 2019. See P.C. 1320.6–1320.34 in the Penal Code Section of this Digest for more information.

Gov't C. 36900
(Amended)
(Ch. 970) (AB 2598)
(Effective 1/1/2019)

Increases the fine amount that a city may assess for local building and safety code violations, and creates a new fine for building and safety code violations on commercial property. Keeps fine amounts for infraction violations the same.

For building and safety code violations, increases the maximum fine from $100 to $130 for a first violation, from $500 to $700 for a second violation of the same ordinance within a year, and from $1,000 to $1,300 for a third or

continued

subsequent violation of the same ordinance within one year of the first violation.

Creates a new fine of up to $2,500 for each violation of the same ordinance within two years of the first violation, if the property is a commercial property with a building on it, and the violation is due to the failure of the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

Requires cities to establish a process for granting a hardship waiver to reduce the amount of the fine for a second or third infraction or a second or third building code violation, if the violator can show that he or she made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would be an "undue financial burden."

This bill also amends Gov't C. 25132 to increase county building and safety code fines in the same way. See above.

[According to the legislative history of this bill, counties and cities are struggling with abandoned buildings and the refusal of owners to maintain vacant properties. It has also been many years since building and safety code fines have been updated to reflect inflation.]

Gov't C. 51036
Gov't C. 51037
Gov't C. 51038
Gov't C. 51039
(New)
(Ch. 459) (SB 946)
(Effective 1/1/2019)

Adds new Chapter 6.2 to Part 1 of Division 1 of Title 5 of the Government Code entitled "Sidewalk Vendors."

Prohibits local authorities from regulating sidewalk vendors except as permitted in new Gov't C. 51038 and 51039. Makes sidewalk vending violations subject to administrative fines only, and requires that any pending criminal prosecution under a local ordinance or resolution regulating or prohibiting sidewalk vendors must be dismissed.

Defines "sidewalk vendor" as person who sells food or merchandise from a cart, stand, or display on a public sidewalk or pedestrian path. Includes both roaming sidewalk vendors who move from place to place and stop only to complete a transaction, and stationary sidewalk vendors who sell from a fixed location.

Sets forth a number of restrictions on a local authority's power to regulate sidewalk vendors. For example, a local

continued

authority cannot restrict sidewalk vendors to operate only in a designated area unless the restriction is directly related to "objective health, safety, or welfare concerns."

Provides that a violation of a local authority's sidewalk vending program is punishable by an administrative fine of varying amounts (not exceeding $100, $200, $250, $500, $1,000) depending on the number and type of violations. Permits a sidewalk vendor permit to be rescinded upon a fourth or subsequent violation.

Provides that the failure to pay an administrative fine shall not be punishable as an infraction or a misdemeanor.

In addition to requiring the dismissal of any pending criminal prosecution for a violation relating to sidewalk vending (Gov't C. 51039(d)(2)), Gov't C. 51039(g) provides that a person who is currently serving a sentence, or who has completed a sentence, or who is subject to a fine, for an infraction or misdemeanor conviction for sidewalk vending who would not have been guilty of that offense under this new chapter, may petition for the dismissal of the sentence, fine, or conviction. Provides that upon receiving the petition, the court shall presume the defendant satisfies the criteria for dismissal unless the party opposing the petition proves by clear and convincing evidence that the defendant does not. Provides that unless requested by the defendant/petitioner, no hearing is necessary to grant or deny a petition. (These dismissal provisions are very similar to those for marijuana conviction dismissals and re-sentencings pursuant to H&S 11361.8 (Proposition 64).)

[Uncodified Section One of this bill sets forth the Legislature's declarations that sidewalk vending contributes to "a safe and dynamic public place" and that the "safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations." The Legislature also states that the "criminalization of small business entrepreneurs" is a matter of statewide concern. The legislative history of this bill makes it clear that the purpose of the bill is to help vendors who are in California illegally, avoid a criminal conviction for a sidewalk vending violation that might subject them to deportation, and to remove any existing sidewalk criminal convictions from their records.]

Gov't C. 68115
(Amended)
(Ch. 201) (SB 1208)
(Effective 1/1/2019)

Revises provisions relating to court operations during emergencies, in order to add flexibility to deal with natural disasters and threats to public safety.

The legislative history of this bill cites floods and fires in California in 2017 as the reason for these amendments.

Updates the types of events that qualify as an emergency situation to add an act of terrorism, public unrest, epidemic, natural disaster, and a substantial risk to the health and welfare of court personnel or the public. Adds, at the beginning of the statute, a condition that leads to a state of emergency being proclaimed by the U.S. President or by the Governor pursuant to Gov't C. 8625, so that it applies to civil cases as well as to the juvenile and criminal cases it already applies to. Retains war, public calamity, and a large influx of criminal cases resulting from a large number of arrests within a short period. Retains the destruction of or danger to a court building and expands it to include a court facility being unsafe for persons to be present in it or to have access to it. Eliminates "insurrection" and "pestilence," which appear to be covered under public unrest, epidemic, or natural disaster.

Expands the counties to which civil cases may be transferred, to any county, instead of to only an adjacent county. Provides that if the parties agree, the case may be transferred to any county. Or if the court finds that an extreme or undue hardship would result if the civil case is not transferred for trial, it may be transferred to a court in an adjacent county or to any superior court within 100 miles.

Authorizes the time periods for trying civil cases set forth in C.C.P. 583.310 and 583.320 to be extended, for the fewest days necessary. (Pursuant to C.C.P. 583.310, a civil case must be tried within five years of the commencement of the action. Pursuant to C.C.P. 583.320, a civil case must be tried within three years of a reversal or an order granting a new trial.)

Increases the already extended time for holding preliminary examinations in criminal cases from not more than 15 days to not more than 15 *court* days.

continued

Retains the extension from 48 hours (P.C. 825) to seven days for arraigning a defendant in a criminal case. Retains the 30-day extension for trying a criminal case (P.C. 1382).

Authorizes the Chairperson of the Judicial Council to grant further extensions of time at the request of a presiding judge "upon making a renewed determination that circumstances warranting relief under this section continue to exist."

Harbors and Navigation Code

H&N 523
(Amended)
(Ch. 341) (AB 2175)
(Effective 1/1/2019)

Adds additional circumstances under which, without a search warrant, a peace officer, or a marine safety officer employed by a city, county, or district, may remove a vessel from public property in the officer's jurisdiction, and store the vessel.

The additional circumstances:

1. when the officer has probable cause to believe the vessel was used in the commission of a crime; or
2. when the officer has probable cause to believe that the vessel itself provides evidence that a crime was committed, or the vessel contains evidence of a possible crime and the evidence cannot be easily removed from the vessel.

Provides that no lien shall attach to a vessel removed based on the above circumstances, unless it is determined that the vessel was used in the commission of a crime with the express or implied consent of the owner.

Permits the court to order a person convicted of a crime involving the use of a vessel to pay the costs of towing and storage, and any administrative charges imposed for removal, impoundment, storage, or release of the vessel.

Provides that "vessel" includes both the vessel and any trailer used by the operator to transport the vessel.

[These amendments are modeled after existing V.C. 22655.5, pertaining to the removal of vehicles from a highway or from public or private property when a vehicle was used to commit a crime, or is evidence of a crime, or contains evidence of a crime.]

[This section continues to provide that a peace officer, lifeguard, or marine safety officer may remove a vessel that is left unattended and is obstructing traffic; that has been reported stolen; when the person(s) in charge of the vessel are incapacitated and unable to provide for its custody or removal; when the operator of a vessel is arrested; when the vessel poses a danger to public safety or health; when the vessel poses a threat to the environment or wildlife; or when a vessel's registration has been expired for more than one year.]

Health and Safety Code

H&S 1531.6
H&S 1538.75
(New)
(Ch. 35) (AB 1811)
(Effective 6/27/2018)

New H&S 1531.6 requires a group home, transitional shelter care facility, short-term residential therapeutic program, and temporary shelter care facility to develop protocols that dictate the circumstances under which law enforcement may be contacted in response to the conduct of a child residing at the facility. Requires the protocols to include trauma-informed and evidence-based de-escalation and intervention techniques, and to permit the contacting of law enforcement only as a last resort and only upon approval of a staff supervisor. Permits the contacting of law enforcement in an emergency situation if there is an immediate risk of serious harm to a child or others.

Does not prohibit the contacting of law enforcement in a situation where the facility or a facility employee is required by law to report an incident, such as the mandated reporting of child abuse, or if a child is missing or has run away.

New H&S 1538.75 requires the state Dep't of Social Services to allocate funds for the purpose of providing training and community-based, culturally relevant, trauma-informed services in order to reduce the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities licensed to provide residential care to dependent children. Provides that funds are to be allocated to specified agencies that submit a three-year plan, and requires that a plan designate the community-based organization(s) that will provide services.

H&S 1797.10
(New)
(Ch. 272) (AB 1776)
(Effective 1/1/2019)

Permits San Bernardino County to conduct a three-year pilot project with the Inland Counties Emergency Medical Agency that would authorize emergency transportation of a police dog injured in the line of duty, to a veterinarian. Permits emergency ambulance transportation of an injured police dog if:

1. a request for transport is made by the injured police dog's handler;
2. an ambulance is already present at the scene of the injury when the transport request is made;
3. no person at the scene requires medical attention or medical transportation at the time the transport request is made;

continued

4. the ambulance owner has a policy that permits the transport of an injured police dog;
5. the handler accompanies the injured police dog and remains in full control of the dog during transport;
6. the handler provides the location of the nearest facility that can provide veterinary care; and
7. the handler remains responsible for any first aid rendered to the injured dog during transport.

Provides that "police dog" means a dog being used by a peace officer in the discharge of his or her duties and includes, but is not limited to, a search and rescue dog or a passive alert dog.

Requires the Inland Counties Emergency Medical Agency to collect data on the number of police dogs transported, the location where they were transported to, and the outcome of those transports, and requires a report to be submitted to the Legislature by January 1, 2022.

H&S 11055
H&S 11056
(Amended)
(Ch. 589) (AB 2783)
(Effective 1/1/2019)

AB 2783 reclassifies hydrocodone combination products from Schedule III (H&S 11056) controlled substances to Schedule II (H&S 11055) controlled substances in order to align California's schedules with federal schedules (which have hydrocodone combination products in Schedule II) and to more tightly regulate the prescription and distribution of these products in light of the high potential for abuse and dependence. An example of a hydrocodone combination product is a product that contains both hydrocodone and either ibuprofen or acetaminophen.

Hydrocodone combination products are moved from H&S 11056(e)(3) and (e)(4) to H&S 11055(b)(1)(I). Previously, hydrocodone was specified in Schedule II and hydrocodone combination products were specified in Schedule III. They are now all in Schedule II.

It appears that the charging sections for hydrocodone combination products remains the same: H&S 11350, 11351, and 11352. These sections specify controlled substances listed in H&S 11055(b) (which is where hydrocodone combination products are now listed) and they specify controlled substances in Schedule III that are narcotic drugs (which applied to hydrocodone combination products when they were listed in Schedule III).

continued

This is what is now in H&S 11055(b)(1)(I):

(i) Hydrocodone.

(ii) Hydrocodone combination products with not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(iii) Oral liquid preparations of dihydrocodeinone containing the above specified amounts that contain, as its non-narcotic ingredients, two or more antihistamines in combination with each other.

(iv) Hydrocodone combination products with not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

H&S 11056
(Amended)
(Ch. 81) (AB 2589)
(Effective 1/1/2019)

AB 2589 amends H&S 11056 to exempt human chorionic gonadotropin (hCG) from the regulations associated with Schedule III controlled substances when possessed by, sold to, purchased by, transferred to, or administered by a licensed veterinarian, or a licensed veterinarian's designated agent, exclusively for veterinary use; hCG continues to be listed as a Schedule III controlled substance in H&S 11056(f)(32), with this added specific exception for veterinarians.

The purpose of this amendment is to make it easier and simpler for veterinarians to obtain hCG. According to the legislative history of the bill, hCG is used for cattle fertility treatments and to encourage fish to spawn.

H&S 11107.2
(New)
(Ch. 595) (AB 3112)
(Effective 7/1/2019)

Prohibits a manufacturer, wholesaler, reseller, retailer or other person or entity from selling to any customer any quantity of non-odorized butane. Provides that a violation is subject to a civil penalty of $2,500 and that a district attorney, city attorney, county counsel, or Attorney General may bring a civil enforcement action.

continued

Specifies these exceptions:

1. butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;
2. butane sold to a person for use in a lawful commercial enterprise, including a volatile solvent extraction activity or a medical cannabis collective or cooperative;
3. the sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges or other products that contain or use non-odorized butane and contain fewer than 150 milliliters of butane; and
4. the sale of any product in which butane is used as an aerosol propellant.

Defines "sell" or "sale" as "to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration."

Defines "non-odorized butane" as iso-butane, n-butane, or a mixture of butane and propane of any power that may also use the words "refined," "pure," "purified," "premium," or "filtered," to describe the butane or butane mixture, which does not contain ethyl mercaptan or a similar odorant.

[According to the legislative history of this bill, home labs that use butane (a solvent) to separate and extract hash oil from cannabis are a dangerous and growing trend, particularly where cannabis is legal. The extracted oil (called butane hash oil) is a concentrated form of cannabis with a higher concentration of tetrahydrocannabinol (THC, the active ingredient in cannabis). Butane is a volatile substance and its use in cannabis labs can result in explosions, injury, and death.]

H&S 11150.2
(New)
(Ch. 62) (AB 710)
(Effective 7/9/2018)

Provides that upon the date of a specified change in federal law, a product containing cannabidiol may be prescribed, furnished, dispensed, or possessed. Specifies that the federal law change must be either:

1. the moving of cannabidiol from Schedule I of the federal Controlled Substances Act to a different Schedule, or

continued

2. the U.S. Food and Drug Administration (FDA) approving a product containing cannabidiol and either cannibidiol being moved from Schedule I or being exempted from one or more provisions of the federal Controlled Substances Act so as to permit a physician or pharmacist to prescribe or dispense it.

According to the legislative history of this bill and uncodified Section One, there is a drug containing cannabidiol (Epidiolex) that was in trials with the FDA and shows promise as an effective treatment for epilepsy. The purpose of this amendment is make a medication containing cannabidiol legal in California as soon as it is removed from federal Schedule I, or, as soon as it is approved by the FDA and either moved out of Schedule I or exempted from one or more provisions of the federal Controlled Substances Act. Cannabidiol is a compound extracted from cannabis that does not cause psychoactive activity and has pain relieving, anti-inflammatory, anti-psychotic, and tumor-inhibiting properties.

It appears that the prescribing and dispensing of Epidiolex is legal as of September 27, 2018.

According to the U.S. Food & Drug Administration website, on June 25, 2018, it approved Epidiolex for the treatment of seizures associated with two rare and severe forms of epilepsy. The website states that this is the first FDA-approved drug that contains a purified drug substance derived from marijuana. According to the Drug Enforcement Administration (DEA) website, DEA announced on September 27, 2018, that Epidiolex was being placed in Schedule V of the Controlled Substances Act, the least restrictive schedule. (Marijuana is still in Schedule I.) The DEA announcement states that marijuana and cannabidiol derived from marijuana remain against the law, except for the limited circumstances where it has been determined there is a medically approved benefit. With both FDA approval and the placing of Epidiolex into Schedule V, it appears that the conditions of the bill have been met and that physicians and pharmacists may prescribe and dispense Epidiolex.

continued

This bill also creates new B&P 26002 to exempt a product containing cannabidiol that is used to treat a medical condition from the Medicinal and Adult-Use Cannabis Regulation & Safety Act (MAUCRSA: B&P 26000–26231.2) when the above conditions are met.

H&S 11158.1
(New)
(Ch. 693) (SB 1109)
(Effective 1/1/2019)

Requires a prescriber, before issuing for a minor a first prescription in a single course of treatment for a controlled substance containing an opioid, to discuss with the minor, or the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, the risks of addiction and overdose, the increased risk of addiction for a person who suffers from a mental health disorder and substance abuse, and the danger of taking an opioid with alcohol and other drugs.

Provides several exceptions, such as in emergency situations.

Provides that failure to comply with this new section is not a criminal offense.

H&S 11161.5
H&S 11162.1
(Amended)
(Ch. 479) (AB 1753)
(Effective 1/1/2019)

Amends H&S 11161.5 to authorize DOJ to limit the number of approved controlled substance prescription security printers to as few as three approved vendors, in order to facilitate the standardization of prescription forms and the serialization of prescription forms with unique identifiers.

H&S 11165
(Amended)
(Ch. 478) (AB 1751)
and
(Ch. 479) (AB 1753)
(Effective 1/1/2019)

Amends H&S 11162.1 to require a prescription form for a controlled substance to have a uniquely serialized number, in a manner prescribed by DOJ. Also requires a security printer to submit the following information to DOJ for all prescription forms delivered:

1. serial numbers of all prescription forms delivered;
2. all prescriber names and Drug Enforcement Administration Controlled Substance Registration Certificate numbers displayed on the prescription forms;
3. the delivery shipment recipient names; and
4. the date of delivery.

Amends H&S 11165 to require DOJ, by July 1, 2020, to adopt regulations regarding the access and use of information in CURES. (CURES is the Controlled Substance Utilization

continued

Review and Evaluation System that electronically monitors the prescribing and dispensing of controlled substances in Schedules II, III, and IV.) Authorizes DOJ to enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state for purposes of interstate data sharing of prescription drug monitoring program information, so that California's health care providers will have more complete information when prescribing or dispensing a controlled substance. AB 1751 also amends Civil Code 1798.24 to permit the sharing of personal information for the purpose of participating in interstate data sharing of prescription drug monitoring program information, if disclosure is limited to prescription drug monitoring program information.

[The purpose of these bills is to reduce prescription form forgery and fraud, and prescription drug abuse. Uncodified Section One of AB 1753 sets forth the Legislature's findings that the use of paper prescription pads to prescribe controlled substances leads to theft and fraud and contributes to prescription drug abuse.]

H&S 11165.6
(New)
(Ch. 274) (AB 2086)
(Effective 1/1/2019)

Adds that a prescriber shall be allowed to access the CURES database for a list of patients for whom the prescriber is listed as a prescriber in the CURES database. (CURES = Controlled Substance Utilization Review and Evaluation System.)

The purpose of this bill is to permit physicians to check the CURES controlled substance prescription database in order to combat prescription fraud, especially false opioid prescriptions. A physician is permitted to get into the system to see if any person is presenting fraudulent prescriptions by falsely identifying the physician as the person's prescribing doctor.

H&S 11361.9
(New)
(Ch. 993) (AB 1793)
(Effective 1/1/2019)

Requires DOJ, by July 1, 2019, to review the records in its state criminal history information database and identify prior marijuana convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or re-designation pursuant to H&S 11361.8. (H&S 11361.8 was created by Proposition 64, the Adult Use of Marijuana Act (AUMA), enacted by voters in November 2016.)

continued

Requires DOJ to notify local prosecutors of all cases in their jurisdictions that are eligible for H&S 11361.8 relief. Requires local prosecutors, by July 1, 2020, to review all cases, to determine whether or not to challenge relief under H&S 11361.8, and to inform the court and the public defender's office about which cases are being challenged and which ones are not.

Requires the public defender's office to make a reasonable effort to notify defendants whose cases are being challenged.

Requires the court to grant H&S 11361.8 relief if the prosecution does not challenge such relief.

Requires the court to notify DOJ about any recall or dismissal of sentence, dismissal and sealing, or re-designation, and requires DOJ to modify its state criminal history database accordingly.

Requires DOJ to post general information on its Internet Web site about H&S 11361.8 relief.

Provides that a defendant who is "currently serving a sentence" or who "proactively" petitions for H&S 11361.8 relief is to be prioritized for review.

[The phrase "currently serving a sentence" appears to be poor drafting. The Legislature most likely does *not* mean a defendant who is serving a sentence for any offense. This phrase should probably be read as "currently serving a sentence for a marijuana offense specified in H&S 11361.8."]

H&S 11364.7
(Amended)
(Ch. 34) (AB 1810)
(Effective 6/27/2018)

Adds "materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability" to those items (hypodermic needles and syringes) that a public entity and its agents and employees are permitted to distribute as part of a clean needle and syringe exchange project (H&S 121349–121349.3) and thus *not* be subject to prosecution under this section for the crime of delivering, transferring, possessing, furnishing, etc., drug paraphernalia. Does not specify any list or examples of what might qualify as necessary materials.

H&S 14950
H&S 14951
H&S 14955
H&S 14956
H&S 14957
H&S 14958
(Amended)
H&S 14960
(Repealed)
(Ch. 613) (SB 1408)
(Effective 1/1/2019)

Makes changes to the California Cigarette Fire Safety and Firefighter Protection Act, which requires cigarettes sold in California to have reduced ignition strength so that they extinguish when not being actively smoked. (According to the legislative history of this bill, the act is credited with reducing smoking-related fire deaths.)

Updates the name of the enforcing agency from the State Board of Equalization to the California Dep't of Tax and Fee Administration (DTAF).

Eliminates the exemption that had permitted non-fire safe cigarettes into California if the manufacturer claimed they were for sale in another state. Now, no non-fire-safe cigarettes are permitted in California.

Adds disposal of non-fire safe cigarettes "as contraband per se" to the actions (seizure) that DTAF or a law enforcement agency may take upon discovery that a person offers, possesses for sale, or has made a sale, of a prohibited cigarette.

Retains the various civil penalties for violations of the Act.

H&S 19891
(Amended)
H&S 19892
(New)
(Ch. 621) (SB 969)
(Effective 1/1/2019)

New H&S 19892 prohibits, beginning July 1, 2019, the manufacture, sale, or installation of a residential garage door opener that does *not* have a battery backup function that is designed to open the garage door when there is an electrical outage. Also prohibits installing a replacement residential garage door on or after July 1, 2019, that connects to an opener that does not have battery backup. H&S 19891 is amended to cross-reference new H&S 19892, and provides that a violation of new H&S 19892 is subject to a civil penalty of $1,000 per opener installed, manufactured, or sold. H&S 19891 continues to provide that an action to recover the civil penalty may be brought by a district attorney, an affected consumer, or by a local building department. [The legislative history of this bill references the 2017 Northern California fires and the inability of some residents to manually lift their garage doors when the power was out.]

H&S 110375
(Amended)
(Ch. 544) (AB 2632)
(Effective 1/1/2019)

Makes changes to the Sherman Food, Drug, and Cosmetic Law (H&S 109875–111915) to add additional circumstances under which non-functional slack fill is legal. (Slack fill is the empty space between the actual capacity of a container and the volume of product inside it. Slack fill can be "functional," such as when extra packaging is required to protect a product; or it can be "non-functional" in that it misleads a consumer into believing there is more product in the package than there really is.) This bill expands the definition of what is *not* considered non-functional slack fill, meaning that the slack fill is legal.

Amends H&S 110375 (which prohibits a container from having a false bottom or from being made to be misleading) to add that empty space under the following circumstances is *not* non-functional slack fill:

1. a line or graphic that represents the product fill and a statement communicating that the line or graphic represents the product fill (such as "Fill Line"), with both the line and statement being clearly and conspicuously depicted on the exterior of the packaging. Provides that if the product is subject to settling, the line shall represent the minimum amount of product after settling; or
2. where the mode of commerce does not allow the consumer to view or handle the physical container or product.

[This bill also makes slack fill amendments to B&P 12606 and B&P 12606.2. See the Business and Professions Code Section of this Digest.]

H&S 113825
H&S 114367
H&S 114367.1
H&S 114367.2
H&S 114367.3
H&S 114367.4
H&S 114367.5
H&S 114367.6
(New)
(Ch. 470) (AB 626)
(Effective 1/1/2019)

Creates new Chapter 11.6 in Part 7 of Division 104 of the Health & Safety Code (H&S 114367–114367.6) entitled "Microenterprise Home Kitchen Operation."

Authorizes cities and counties to permit microenterprise home kitchen operations, a new category of retail food facility.

New H&S 113825 defines such an operation as a food facility operated by a resident in a private home where food is stored, handled, prepared for consumers, and served to consumers, and where a number of conditions are met, including these:

continued

1. the operation has no more than one full-time food employee, not including a family or household member;
2. food is prepared, cooked, and served on the same day;
3. food is consumed onsite, or offsite if picked up by the consumer or delivered within a safe time period;
4. the service and sale of raw oysters is prohibited, and the use of raw milk products is prohibited;
5. food preparation is limited to 30 individual meals per day and 60 individual meals per week;
6. the operation has no more than $50,000 in gross annual sales; and
7. The operation sells food directly to consumers and not to a wholesaler or retailer.

Provides that a catering operation is *not* a microenterprise home kitchen operation and neither is a cottage food operation (which permits using home kitchens to make and sell non-potentially hazardous food, i.e., food that does not require refrigeration or heat in order to prevent bacteria, microorganisms, and toxins.)

Requires a microenterprise home kitchen operation to obtain a permit from a local law enforcement agency. Lists a number of food service facility requirements that these kitchens are exempt from, in order to accommodate the differences between a home kitchen and a commercial kitchen. For example, a home kitchen is not required to post no smoking signs and is not required to prohibit the presence of people unnecessary to the food facility operation.

Provides that after the initial inspection of a microenterprise home kitchen for purposes of determining compliance, the operation shall *not* be subject to routine inspections, except that a local law enforcement agency may inspect after providing the operation with reasonable advance notice, or when it has a "valid reason" such as a consumer complaint. Limits inspections to one per year except where a law enforcement agency has a valid reason, such as a consumer complaint.

[According to the legislative history of this bill, its purpose is to make it easier for cooks to independently benefit from their labor and skills and to promote economic development in vulnerable communities where the sale of homemade food is already popular.]

H&S 114379
H&S 114379.10
H&S 114379.20
H&S 114379.30
H&S 114379.40
H&S 114379.50
H&S 114379.60
(New)
(Ch. 608) (SB 1192)
(Effective 1/1/2019)

Adds new Chapter 12.8 in Part 7 of Division 104 of the Health and Safety Code entitled "Children's Meals."

Creates new infraction crimes relating to restaurants that sell children's meals. Requires restaurants that sell children's meals to make the *offered default beverage* water, sparkling water, or flavored water, with no added natural or artificial sweeteners; unflavored milk (e.g., no chocolate milk); or a non-dairy milk alternative that contains no more than 130 calories per container or serving. In other words, beverages such as soda or juice cannot be the offered beverage with a children's meal. Also requires restaurant menus and advertisements to list the default beverages. Permits a restaurant to sell an alternative beverage if requested by the purchaser of the children's meal. Defines "restaurant" as a retail food establishment that prepares, serves, and vends food directly to the consumer.

New H&S 114379.50 provides that a violation of this new chapter is an infraction. A first violation shall result in only a notice of violation. A second violation within five years is an infraction punishable by a fine of up to $250. A third or subsequent violation within five years is an infraction punishable by a fine of up to $500. Provides that a single inspection visit cannot result in more than one violation.

[According to Uncodified Section One of this bill, the concern being addressed is childhood obesity.]

H&S 121349
H&S 121349.1
H&S 121349.2
H&S 121349.3
(Amended)
(Ch. 34) (AB 1810)
(Effective 6/27/2018)

Removes the sunset date of January 1, 2019, from these sections that permit a city or county to operate a clean needle and syringe exchange project, continuing these programs indefinitely.

Expands these needle/syringe programs to include "any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability."

H&S 122354.5
(New)
(Ch. 740) (AB 485)
(2017 Legislation with a Delayed Operative Date of 1/1/2019)

and

(Amended)
(Ch. 145) (AB 2445)
(2018 Legislation)
(Effective 1/1/2019)

Makes changes to pet store procedures added by 2017 legislation but not operative until January 1, 2019.

In 2017, AB 485 created new H&S 122354.5 to prohibit a pet store operator from selling a dog, cat, or rabbit in a pet store unless it was obtained from a public animal control agency or shelter, a society for the prevention of cruelty to animals shelter, a humane society shelter, or a rescue group. It requires pet stores to maintain records for at least one year documenting where each dog, cat, or rabbit was obtained and post on each cage or enclosure the name of the agency, shelter, or non-profit from which it was obtained. It provides for a civil penalty of $500 for each animal offered for sale in violation of this section.

[According to the legislative history, the purpose is to have animal shelters and humane societies be the source for these animals sold in pet stores, instead of commercial breeders, puppy mills, or kitten farms, with the goal to have fewer animals housed or killed in taxpayer-funded county shelters.]

In 2018, AB 2445 added four new subdivisions to this section, requiring a pet store operator to maintain records regarding the health, status, and disposition of each animal for at least two years after the animal is sold, providing that these records "shall be available" during normal business hours to humane officers, animal control officers, law enforcement, prospective animal purchasers, and the actual purchaser of the animal.

Requires a pet store operator to provide to a prospective purchaser, in writing, the store's pet return policy, including whether the pet store will provide follow-up veterinary care for the animal in the event of illness.

Requires a shelter, humane society, or rescue group that supplies an animal to a pet store to provide in writing, at the request of the pet store, the terms under which the animal is being transferred to the store, including policies on returning a sick animal, the animal's origin if known, and any veterinary records.

Requires a pet store operator to provide to a prospective or actual purchaser, a copy of the veterinary medical records of the animal, if there are such records.

Continues to be punishable by a $500 civil penalty for each animal offered for sale in violation of this section.

Juvenile Delinquency

P.C. 3007.08
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Requires CDCR, the Division of Juvenile Justice, and the DMV to enter into an interagency agreement to ensure that a juvenile offender released from a state juvenile facility has a valid identification card. Applies to juvenile offenders who previously held a California driver's license or identification card, and to juvenile offenders who provide acceptable proof of their true name, date of birth, social security number, legal presence in the U.S., and California residency.

W&I 212.5
(Amended)
(Ch. 910) (AB 1930)
(Effective 1/1/2019)

Adds that the requirements for the electronic filing of documents in a juvenile court matter do not prohibit using electronic means to send information regarding the date, time, and place of a juvenile court hearing without complying with W&I 212.5, as long as it is done in a manner that preserves and ensures confidentiality of records by encryption.

W&I 601
W&I 602
(Amended)
(Ch. 1006) (SB 439)
(Effective 1/1/2019)
W&I 602.1
(New)
(Ch. 1006) (SB 439)
(Effective 1/1/20**20**)

Removes most minors under age 12 from the jurisdiction of the juvenile court by providing that a minor who is under age 12 is within the jurisdiction of the juvenile court *only if* he or she commits a specified offense. The offenses specified are murder, forcible rape, forcible sodomy, forcible oral copulation, and forcible sexual penetration. Therefore, a minor who is under age 12 at the time he or she commits any other crime, including serious or violent felonies such as attempted murder, crimes involving the infliction of great bodily injury, gang shootings, and child molestation, cannot be prosecuted in juvenile court.

New W&I 602.1 sets forth how minors under age 12 are to be handled. Oddly, new W&I 602.1 is not operative until January 1, 2020, an entire year after the juvenile courts lose jurisdiction over under-age-12 criminals. New W&I 602.1 provides that the Legislature intends counties to "pursue appropriate measures to serve and protect a child only as needed, avoiding any intervention whenever possible, and using the least restrictive alternatives through available school-, health-, and community-based services." The Legislature intends that counties use existing funding to provide alternative services. Provides that when a minor under age 12 comes to the attention of law enforcement because of criminal activity (W&I 602) or truancy or being

continued

beyond control (W&I 601), "the response of the county shall be to release the minor to his or her parent, guardian, or caregiver." Requires counties to develop a process for the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

[According to the legislative history of this bill, its purpose is to "protect young children from the negative impacts of formal justice system involvement, promote their rights, health, and well-being through alternative child-serving systems, and decrease the amount of resources wasted in the juvenile justice system."]

W&I 607
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Adds new discharge provisions to this section, which pertains to a juvenile court's retention of jurisdiction over a juvenile offender and sets forth discharge deadlines for specified offenders committed by the juvenile court to the CDCR, Division of Juvenile Facilities (DJF).

Adds that a person committed to DJF *on or after July 1, 2018* who is found to have committed an offense listed in P.C. 290.008(c), shall be discharged upon the expiration of a two-year period of control or when reaching 23 years of age, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

[P.C. 290.008(c) lists assault with intent to commit rape or other sex offenses in P.C. 220; a P.C. 207 or 209 kidnapping committed with the intent to violate P.C. 261, 286, 287, 288, former P.C. 288a, or P.C. 289; P.C. 261(a)(1), (a)(2), (a)(3), (a)(4) or (a)(6); P.C. 264.1; P.C. 266c; P.C. 267; P.C. 286(b)(1), (c), or (d); P.C. 287(b)(1), (c), or (d); P.C. 288; P.C. 288.5; former P.C. 288a(b)(1), (c), or (d); P.C. 289(a); or P.C. 647.6.]

Adds that a person who at the time of adjudication would, in criminal court, have faced an aggregate sentence of seven years or more, shall be discharged upon the expiration of a two-year period of control or when the person reaches the age of 25, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

continued

Continues to provide that a person committed to DJF for a W&I 707(b) offense shall be discharged upon the expiration of a two-year period of control or when reaching 23 years of age, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

[This bill makes the same amendments to W&I 1769 and 1771.]

W&I 625.4
(New)
(Ch. 745) (AB 1584)
(Effective 1/1/2019)

Restricts the authority of a law enforcement officer to request that a voluntary DNA sample be collected directly from the person of a minor.

Requires all of the following before a voluntary DNA sample may be requested to be "collected directly from the person of a minor":

1. the minor consents in writing after being verbally informed of the purpose and manner of the collection, of the right to refuse consent, of the right to expungement of the sample, and of the right to consult with an attorney, parent, or legal guardian prior to providing consent;
2. a parent or legal guardian identified by the minor, or an attorney representing the minor, is contacted, is provided the above information, is allowed to privately consult by telephone or in person with the minor, and, "after that consultation, concurs with the minor's decision to consent"; and
3. law enforcement provides the minor with a form for requesting expungement of the voluntary DNA sample.

Note that based on #2, above, it appears that even if a minor consents to providing a voluntary DNA sample directly from his or her person, it *cannot* be taken if the minor's parent or attorney does not agree with the minor's decision to provide it.

Note also that this section applies only to DNA samples collected "directly from the person of a minor." It would not apply to, for example, a DNA sample taken from a cup or bottle the minor drank from while in police custody or to DNA on an item the police seized when the minor was arrested. Provides a list of exceptions that include, but are not limited to, the following:

continued

1. a juvenile DNA sample collected pursuant to existing P.C. 296 (juveniles convicted in adult court of a felony; juveniles adjudicated as wards of the juvenile court for a felony pursuant to W&I 602; juveniles required to register as sex or arson offenders for a felony or misdemeanor);
2. a sample collected pursuant to a search warrant, a court order, or exigent circumstances;
3. a sample collected during the investigation or identification of a missing or abducted minor;
4. a sample collected from a juvenile victim or suspected perpetrator of a sexual assault or other crime "as authorized by law"; or
5. A sample collected as evidence in a criminal investigation, such as evidence from a crime scene *or an abandoned sample*.

This new section appears to contemplate that a voluntary DNA sample taken directly from the person of a minor would be a buccal swab sample. Buccal swab samples are mentioned once, in the paragraph that requires the minor to be given an expungement form.

Prohibits the detention of a minor from being "unreasonably extended" for the purpose of contacting a minor's parent or attorney if a parent or attorney cannot be reached after reasonable attempts have been made.

Requires the court, in adjudicating the admissibility of a voluntary DNA sample taken directly from a minor, to "consider the effect of any failure to comply with this section." However, the language of this new section says nothing about suppressing evidence, or what circumstances would justify suppression.

Prohibits a voluntary DNA sample and profile information from being searched, analyzed, or compared to DNA samples or profiles in other cases, unless that additional use is permitted by court order. [The use of a DNA sample *not* obtained directly from the person of a minor would have no such restrictions.]

Requires a law enforcement agency obtaining a voluntary sample pursuant to this section to determine within two years whether the minor remains a suspect in a criminal investigation, and if the DNA sample is not found to implicate the minor, must expunge the sample and the

continued

DNA profile information from the databases or data banks into which they were entered. Requires that if a minor requests expungement of a voluntary DNA sample, the law enforcement agency must make reasonable efforts to promptly expunge the sample and the DNA profile information unless the sample has implicated the minor as a suspect in a criminal investigation.

Provides that any local law enforcement agency found by clear and convincing evidence to maintain a "pattern and practice of collecting voluntary DNA reference samples directly from the person of a minor in violation of this section after January 1, 2019," is liable to each minor in the amount of $5,000 for each violation, plus attorney's fees and costs.

W&I 707
(Amended)
(Ch. 1012) (SB 1391)
(Effective 1/1/2019)

Prohibits the prosecution of a minor as an adult who was 14 or 15 years old when a W&I 707(b) offense was committed, except where he or she is "not apprehended prior to the end of juvenile court jurisdiction."

Previously, a 16- or 17-year old could be prosecuted in adult court for any felony crime, and a 14- or 15-year-old could be prosecuted in adult court for a W&I 707(b) offense. Now, W&I 707 permits only 16- and 17-year olds to be prosecuted in adult court for any felony. A 14- or 15-year-old may be prosecuted in adult court for a W&I 707(b) offense if not apprehended before the end of juvenile court jurisdiction.

Does not specifically define "prior to the end of juvenile court jurisdiction," but may mean cases where the offender is arrested after reaching age 18.

Uncodified Section Three of this bill contains the Legislature's finding and declaration that this bill is "consistent with and furthers the intent of Proposition 57, as enacted at the November 8, 2016, statewide general election." *However,* the issue of the constitutionality of this amendment is being raised by a number of district attorney offices. The Attorney General's position is that it is constitutional. Proposition 57 eliminated the ability of prosecutors to file charges against minors directly in adult court and instead authorized prosecutors to make a motion to transfer a minor from juvenile court to adult court, with the decision regarding adult court prosecution being solely

continued

for the judge. One of the intents specified in Proposition 57 was to require a judge, not a prosecutor, to decide whether juveniles should be prosecuted in adult court. This bill eliminates the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult court and eliminates the discretion of judges to transfer any 14- or 15-year-old to adult court, no matter how violent the juvenile is and regardless of whether the court determines that prosecution in adult/criminal court is appropriate. This thwarts the voters' intent in Proposition 57. Proposition 57 permits amendment of W&I 707 by a majority vote of the Legislature only if the amendment is consistent with and furthers the intent of Proposition 57.

[If a court finds that this bill is a constitutional amendment to W&I 707, it should be expected that it will be applied retroactively, just as the juvenile provisions of Proposition 57 were applied retroactively. (See *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299.) This means that, beginning January 1, 2019, SB 1391 would be applied to all pending cases no matter when the crime was committed, and to all cases not yet final on appeal.]

[In his signing message, the Governor wrote that juveniles can be held beyond their original sentence and cited W&I 1800 and 1800.5. W&I 1800 requires the Division of Juvenile Facilities (DJF) to request a prosecutor to petition the committing court for extended incarceration if DJF determines that the discharge of the person from the control of DJF would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior. W&I 1800.5 permits the Board of Parole Hearings (BPH) to request the Director of the Division of Juvenile Justice to review any case in which DJF has *not* made a request to a prosecuting attorney pursuant to W&I 1800 and BPH finds that the offender would be physically dangerous to the public. And, under specified circumstances, BPH may request the prosecuting attorney to file a W&I 1800 petition. These sections are seldom used, apparently.]

W&I 709
(Repealed & Added)
W&I 712
(Amended)
(Ch. 991) (AB 1214)
(Effective 1/1/2019)

Repeals the existing version of W&I 709, relating to juvenile competency to stand trial and replaces it with a new version much more favorable to juveniles that results in the immediate dismissal of a petition containing only misdemeanor charges if a juvenile is found incompetent to stand trial, regardless of the seriousness of the crimes, and results in the dismissal of felony charges as early as six months after a finding of incompetence.

Provides that W&I 709 applies to juveniles who come within the jurisdiction of the court pursuant to W&I 601 (habitual truants or beyond control minors) or W&I 602 (minors who commit crimes).

Definition of Incompetence
Provides that a minor is incompetent if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. Provides that incompetency may result from the presence of any condition, including, but not limited to, mental illness, mental disorder, developmental disability, *or developmental immaturity.*

Information the Court May Receive
Permits the court to receive information from any source regarding a minor's ability to understand the proceedings. Permits a minor's counsel or the court to express a doubt about the minor's competency.

Appointment of an Expert
Requires the court to suspend proceedings if the court finds substantial evidence that raises a doubt about competency. Requires the court to appoint an expert to interview the minor and review all available records (medical, education, probation, child welfare, mental health, regional center, and court records). Requires the expert to administer age-appropriate testing specific to the issue of competency.

Judicial Counsel Responsibilities
Requires the Judicial Council, in conjunction with judges, defense attorneys, district attorneys, probation officers, counties, advocates for the mentally ill, etc., to adopt a rule of court identifying the training and experience needed for an expert to be competent in the forensic evaluations of

continued

juveniles. Also requires the Judicial Council to develop and adopt rules for the implementation of other requirements in W&I 709.

Responsibilities of County Stakeholders
Requires the presiding judge of the juvenile court, the probation department, the county mental health department, the public defender, any other entity that represents minors, the district attorney, the regional center, and any other participants the presiding judge designates, to develop a written protocol describing the competency process and a program to ensure that minors found incompetent receive appropriate remediation services.

Additional Experts
Authorizes a district attorney or the minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing. Requires the expert's report and qualifications to be disclosed to the opposing party at least five court days before the hearing.

Appointment of Regional Center Director
Provides that if "the expert" (possibly referring to the expert originally appointed by the court) believes the minor is developmentally disabled, the court must appoint the director of a regional center for developmentally disabled individuals to determine if the minor is eligible for services.

Burden of Proof and Presumptions
Provides that a minor's competency is presumed unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. In the case of a minor under age 14, the court is required to determine the minor's capacity to commit a crime pursuant to existing P.C. 26, before deciding the issue of competency. (P.C. 26 provides that a minor under age 14 is deemed capable of committing a crime if there is clear proof that at the time of committing the crime, he or she knew its wrongfulness.)

Proceedings Upon a Finding of Incompetence
Provides that if the court finds a minor incompetent, proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer

continued

retains jurisdiction and the case must be dismissed. Prior to dismissal, the court may make orders that it deems appropriate for services for the minor.

If the petition for a minor found incompetent contains only misdemeanor crimes, it must be dismissed.

In the case of a minor found incompetent whose petition contains a felony (or presumably a combination of at least one felony and one or more misdemeanors), the court is required to refer the minor to services designed to help the minor attain competency "unless the court finds that competency cannot be achieved within the foreseeable future." [No definition of "foreseeable future" is provided. It is not clear what happens if the court finds that competency cannot be achieved with the foreseeable future and therefore does not refer the minor to remediation services. If the court makes such a finding, is the court required to immediately dismiss the petition?]

Requires remediation services (e.g., mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, training in socialization skills) to be provided in the least restrictive environment consistent with public safety. Provides that a finding of incompetency alone shall not be the basis for secure confinement. Requires the court to review remediation services every 30 calendar days if the minor is in custody and every 45 calendar days if the minor is out of custody. Requires the court to consider appropriate alternatives to juvenile hall confinement, including developmental centers, placement through regional centers, short-term residential therapeutic programs, crisis residential programs, civil commitment, foster care, relative placement, or other residential treatment programs.

Six-Month Hearings
Requires the court to hold a hearing within six months of "the initial receipt of a recommendation by the designated person or entity" (probably referring to the date the court receives a remediation plan for the minor) on whether the minor is "remediated" or able to be remediated. If the recommendation is that the minor has attained competency and the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of the evidence that he or she remains incompetent. If the recommendation

continued

is that the minor is not able to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of the evidence that the minor is "remediable." Provides that if the prosecution contests an evaluation of continued incompetence, the minor is presumed incompetent and the prosecution has the burden of proving by a preponderance of the evidence that the minor is competent.

Provides that at the six-month hearing, if the court finds that the minor has not yet been remediated but is likely to be remediated within six months, the court shall order the minor to return to the remediation program. Prohibits the total remediation period from exceeding one year from the finding of incompetency (except in W&I 707(b) cases, which may have a secure confinement period of up to 18 months; see below).

However, if the court finds that the minor will not achieve competency within six months, the court must dismiss the petition. (It is unclear whether this applies to W&I 707(b) offenses. See below for provisions that permit a secure confinement period of up to 18 months for W&I 707(b) offenses.) Permits the court "to invite" persons and agencies with information about the minor (including, but not limited to, the minor, the minor's attorney, the probation department, parents, guardians, mental health treatment professionals, the public guardian, education providers, social service agencies) to a dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. Also permits a court to refer a minor for evaluation pursuant to W&I 5300–5309 (imminently dangerous person) or W&I 6550–6552 (72-hour evaluation and treatment and 14-day involuntary intensive treatment).

Secure Confinement
Prohibits secure confinement (e.g., confinement in juvenile hall) from extending beyond six months from the finding of incompetence *unless* the court considers specified factors and determines that it is in the best interest of the minor and the public's safety for the minor to remain in secure confinement. Requires the court's reasons to be stated on the record. The specified factors are as follows:

1. where the minor will have the best chance of obtaining competence;

continued

2. whether the placement is the least restrictive setting appropriate for the minor;
3. whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate; and
4. whether the placement is necessary for the safety of the minor or others.

Provides that "only in" W&I 707(b) cases may the court order secure confinement of up 18 months from the finding of incompetence (which suggests that for non-W&I 707(b) cases, the period of secure confinement must be fewer than 18 months.)

[Thus, a juvenile charged with murder would apparently be released from secure confinement at 18 months, no matter how dangerous or remediated he or she is.]

Statements of the Minor
Prohibits statements made by a minor to the appointed expert during a competency evaluation or to mental health professionals during remediation, and "any fruits of these statements," from being used in any other hearing against the minor in juvenile or adult court.

W&I 712
Amends W&I 712, which permits a juvenile court to order a minor evaluated by a regional center or by a licensed mental health professional, to update a cross-reference to W&I 709.

[According to the legislative history, this bill was sponsored by the Chief Probation Officers of California, which wanted limits on how long an incompetent minor could be held in juvenile hall and clear timelines for the competency process, and said that research on remediation services suggests that a majority of youth can be remediated within a year, if they are able to be remediated at all.]

W&I 727
(Amended)
(Ch. 997) (AB 2448)
(Effective 1/1/2019)

Adds access to computer technology and the Internet to the types of activities (age-appropriate extracurricular, enrichment, and social activities) that a juvenile ward in a relative's home, an approved home of a non-relative, a foster home, a licensed community care facility, a group home, or a short-term residential program, is entitled to participate in.

continued

[According to the legislative history of this bill, its purpose is to help youth stay in contact with friends and family and access educational materials for school.]

W&I 731
(Amended)
(Ch. 766) (AB 2595)
(Effective 1/1/2019)

Updates this section to be consistent with current law and with the changes in 2010 that transferred the responsibility for supervising juvenile offenders released by the Division of Juvenile Justice (DJJ) from the Board of Parole Hearings (BPH) to county probation departments. Eliminates outdated references to BPH and clarifies that limitations on the length of the physical confinement of a juvenile ward committed to DJJ do not limit the power of the Board of Juvenile Hearings and the committing juvenile court.

W&I 731(c) continues to limit the amount of time a juvenile ward may be confined by DJJ by providing that a juvenile ward cannot be held in excess of the maximum term of confinement set by the committing court and that the court cannot commit a ward to DJJ for a period that exceeds the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense.

Adds that W&I 731(c) does not limit the power of the Board of Juvenile Hearings to discharge a ward committed to DJJ pursuant to existing W&I 1719 and W&I 1769.

[W&I 1719 provides that one of the duties of the Board of Juvenile Hearings is discharges of commitment. W&I 1769 requires a juvenile offender committed to DJJ to be discharged after a two-year period of control or when he or she reaches a specified age (21, 23, or 25, depending on the circumstances), whichever occurs later.]

Adds that upon discharge, the committing court may retain jurisdiction of the ward pursuant to W&I 607.1 and establish conditions of supervision pursuant to W&I 1766(b).

[W&I 607.1 permits a court to retain jurisdiction of a ward discharged from DJJ until the ward is 25 years of age. W&I 1766(b), among other things, provides that the county of commitment supervises a ward discharged from DJJ and that the conditions of supervision shall be established by the court.]

W&I 786
(Amended)
(Ch. 1002) (AB 2952)
(Effective 1/1/2019)

and

(Ch. 793) (SB 1281)
(Effective 1/1/2019)

Adds that the sealed record of a sustained juvenile petition that renders a person **in**eligible to own or possess a firearm until age 30 pursuant to P.C. 29820, shall not be destroyed until the person reaches 33 years of age. (P.C. 29820 is the felony/misdemeanor crime of a person with a juvenile adjudication for a specified crime owning, possessing, or controlling a firearm before he or she reaches age 30. Destruction at age 33, which is three years beyond age 30, represents the three-year statute of limitations in P.C. 801 for filing a P.C. 29820 violation.)

Expands the list of circumstances under which a sealed record may be accessed, inspected, or utilized, by adding these three:

1. By a prosecuting attorney for the evaluation of whether to charge and prosecute a violation of P.C. 29820.
2. By DOJ for the purpose of determining if a person is suitable to purchase, own, or possess a firearm consistent with P.C. 29820.
3. By a prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case ("*Brady*" information) in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

Requires that the request to the juvenile court for access include the prosecutor's rationale for believing that access to the information is necessary to meet the disclosure obligation. Requires the juvenile court to notify both the subject of the sealed record and his or her attorney and provide them with an opportunity to respond in writing or by personal appearance. Provides that if the court determines that access to a sealed record or a portion of a sealed record is necessary to enable the prosecutor to comply with a disclosure obligation, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed.

[In *S.V. v. Superior Court* (2017) 13 Cal.App.5th 1174, the court held that neither a criminal defendant nor a prosecutor was entitled to disclosure of juvenile delinquency records sealed pursuant to W&I 786, because there was no exception

continued

for disclosure to meet discovery obligations in a pending criminal case. AB 2952 now creates that exception.]

[The legislative history for SB 1281 cites the case of *In re Joshua R.* (2017) 7 Cal.App.5th 864, which dealt with the conflict between being able to obtain records to prove a violation of P.C. 29820 and the sealing of the records that would close off access to those records. The court refused to seal the minor's record when he completed probation successfully. The appellate court found that the record should have been sealed upon successful completion of probation pursuant to W&I 786, pointed out that the form provided for in P.C. 29820(d) is not subject to destruction and is used to determine firearms eligibility, and acknowledged that sealing the record will make it more difficult to prove a P.C. 29820 violation. The court invited a legislative fix or a revision to the form. P.C. 29820(d) provides that "[t]he juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this section may be used to determine eligibility to acquire a firearm."]

[W&I 786 provides for the sealing of juvenile records after satisfactory completion of probation or an informal program of supervision, and directs the court to specify a date by which agencies (law enforcement, probation department, DOJ) shall destroy those records.]

W&I 787
(Amended)
(Ch. 1002) (AB 2952)
(Effective 1/1/2019)

Adds a cross-reference to W&I 786.5. W&I 787 provides that notwithstanding any other law, a record sealed pursuant to W&I 781, 786, and now 786.5, may be accessed by a law enforcement agency, probation department, court, DOJ, or other state or local agency for the limited purpose of complying with data collection or data reporting requirements imposed by other provisions of law.

[Like W&I 781 and 786, W&I 786.5 pertains to the sealing of juvenile records, specifically to the sealing of records by a probation department.]

W&I 851.1
(New)
(Ch. 997) (AB 2448)
(Effective 1/1/2019)

Requires that a minor detained in or committed to a juvenile hall be provided with access to computer technology and the Internet for the purposes of education. *Permits* such minors to have computer and Internet access for maintaining family relationships.

Provides that probation officers may limit or deny access to computer technology or the Internet for safety, security, or staffing reasons.

W&I 889.1
(New)
(Ch. 997) (AB 2448)
(Effective 1/1/2019)

Requires that a minor detained in or committed to a juvenile ranch, camp, or forestry camp be provided with access to computer technology and the Internet for the purposes of education. *Permits* such minors to have computer and Internet access for maintaining family relationships.

Provides that probation officers may limit or deny access to computer technology or the Internet for safety, security, or staffing reasons.

W&I 912
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Eliminates the requirement that a county pay the state $24,000 per year for a person who reaches age 23 after commitment to the CDCR, Division of Juvenile Facilities (DJF). This applies to commitments occurring on and after July 1, 2018. Continues to require a county from which a person is committed to DJF to pay an annual rate of $24,000 for the time the person remains under the direct supervision of DJF or in a boarding home, foster home, or other private or public institution where DJF is paying for the person's care and support, while the person is under 23 years of age.

W&I 1178
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Adds that beginning July 1, 2018, a person housed at the Division of Juvenile Facilities (DJF) pursuant to W&I 1731.5(c)(3) or 1731.7 may petition the Board of Juvenile Hearings for an honorable discharge upon completion of parole or local probation supervision following release, but no sooner than 18 months after the date of release.

[W&I 1731.5(c)(3) permits juvenile offenders prosecuted in adult court and sentenced to state prison to be housed in a DJF facility up to 18 or 25 years of age, depending on the circumstances. New W&I 1731.7 is a DJF pilot program for youth and young adults that transfers youths and

continued

young adults prosecuted in adult court and sentenced to state prison to a juvenile facility, in order to provide developmentally appropriate, rehabilitative programming with the goal of improving outcomes and reducing recidivism.]

W&I 1731.5
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Extends, from 21 to 25, the maximum age of a youth who may be housed in a Division of Juvenile Facilities (DJF) facility instead of state prison if his or her period of incarceration will be completed on or before the youth reaches age 25. (W&I 1731.5(c) permits juvenile offenders prosecuted in adult court and sentenced to state prison to be housed in a DJF facility up to 18 or 25 years of age, depending on the circumstances.)

Provides that this amendment applies retroactively (meaning that it applies to a youth sentenced before its effective date.)

W&I 1731.7
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Requires the CDCR Division of Juvenile Facilities to establish and operate a seven-year pilot program for "transition-aged youth." The program involves "diverting" a limited number of transition-aged youth from adult prison to a juvenile facility in order to provide developmentally appropriate, rehabilitative programming designed for transition-aged youth with the goal of improving their outcomes and reducing recidivism. Requires that initially, youth sentenced to state prison for the commission before age 18 of a W&I 707(b) offense be targeted. Provides that youth with a period of incarceration that cannot be completed by their 25th birthday are not eligible.

W&I 1769
W&I 1771
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Adds new discharge provisions to these sections, which set forth discharge deadlines for specified offenders committed to the CDCR Division of Juvenile Facilities (DJF).

Adds that a person committed to DJF *on or after July 1, 2018* who is found to have committed an offense listed in P.C. 290.008(c), shall be discharged upon the expiration of a two-year period of control or when reaching 23 years of age, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

continued

[P.C. 290.008(c) lists assault with intent to commit rape or other sex offenses in P.C. 220; a P.C. 207 or 209 kidnapping committed with the intent to violate P.C. 261, 286, 287, 288, former P.C. 288a, or P.C. 289; P.C. 261(a)(1), (a)(2), (a)(3), (a)(4) or (a)(6); P.C. 264.1; P.C. 266c; P.C. 267; P.C. 286(b)(1), (c), or (d); P.C. 287(b)(1), (c), or (d); P.C. 288; P.C. 288.5; former P.C. 288a(b)(1), (c), or (d); P.C. 289(a); or P.C. 647.6.]

Adds that a person who at the time of adjudication would, in criminal court, have faced an aggregate sentence of seven years or more, shall be discharged upon the expiration of a two-year period of control or when the person reaches the age of 25, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

Continues to provide that a person committed to DJF for a W&I 707(b) offense shall be discharged upon the expiration of a two-year period of control or when reaching 23 years of age, whichever occurs later, unless an order for further detention is made pursuant to W&I 1800–1803 (extended detention of dangerous persons).

[This bill makes the same amendments to W&I 607.]

Labor Code

Labor Code 432.7
(Amended)
(Ch. 987) (SB 1412)
(Effective 1/1/2019)

Further restricts the ability of a public or private employer to inquire into the criminal convictions of a job applicant by limiting the inquiry to "particular" convictions instead of the more general "criminal" convictions.

Defines "particular conviction" as "a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation, or state law that contains requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses."

Also adds that nothing in Labor Code 432.7 prohibits an employer from conducting a criminal background check or from restricting employment based on criminal history, where the law requires the public or private employer to conduct a background check or to restrict employment.

[According to the legislative history of the bill, its purpose is to limit employers to inquiring only about convictions that have a "direct impact" on an applicant's ability to do the job and to prohibit employers from inquiring about all convictions.]

.

Military and Veterans Code

Military & Vets C. 394
(Amended)
(Ch. 117) (SB 1500)
(Effective 1/1/2019)

Extends the protections of this misdemeanor crime to all members of the military and all branches of the military by updating the terms used. Changes "member of the Army or Navy" to "member of the Armed Forces"; changes "an officer, warrant officer, or enlisted member" to simply "member"; and adds the State Military Reserve and "federal components of the Armed Forces of the United States."

[Military & Vets C. 394 contains several misdemeanor crimes related to employment and public accommodation that prohibit discriminating against members of the Armed Forces in employment, prohibit refusing entrance to a place of amusement or entertainment because a member of the Armed Forces is wearing a uniform, prohibit discharging an employee because of ordered military duty or training, and that prohibit restricting or terminating any collateral benefit for an employee by reason of the employee's duty in the National Guard, State Military Reserve, Naval Militia, or the federal reserve components of the Armed Forces of the United States.]

.

Miscellaneous

California Constitution
Article 2, Section 10
Article 18, Section 4
(Amended)
(Proposition 71)
(Enacted by Voters at the June 5, 2018 Election)

Changes the effective date of a state ballot measure approved by the voters *from* the date after the election unless the measure provides otherwise, *to* the fifth day after the Secretary of State files the statement of the vote. This means that a ballot measure will typically not be effective until at least one month after the election. Existing Elections C. 15501(b) requires the Secretary of State to certify election results no later than the 38th day after the election and to post the certified statement of the vote on his or her Internet Web site. Rather than having an exact effective date for a state ballot measure, the effective date will depend on how fast the Secretary of State certifies the vote.

New Felonies

P.C. 490.4
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Creates the new felony/misdemeanor crime of Organized Retail Theft.

Provides that organized retail theft can be committed in four different ways:

1. acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace, with the intent to sell, exchange, or return merchandise for value; or
2. acting in concert with two or more persons to receive, purchase, or possess merchandise, knowing or believing it to have been stolen; or
3. acting as an agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft; or
4. recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake any of the acts described in #1 or #2, above, or any other statute defining theft of merchandise.

Punishment
A violation of #1, #2, or #3 committed on two or more separate occasions within a 12-month period and where the aggregated value of the merchandise stolen, received, purchased, or possessed is more than $950, is punishable as a felony by 16 months, two years, or three years in the county jail pursuant to P.C. 1170(h), or as a misdemeanor by up to one year in jail.

Any other violation of #1, #2, or #3 that is not described above is a misdemeanor punishable by up to one year in jail.

A violation of #4 is punishable as a felony by 16 months, two years, or three years in county jail pursuant to P.C. 1170(h), or as a misdemeanor by up to one year in jail.

Acting in Concert
Provides that for the purpose of determining whether a defendant acted in concert, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

continued

1. The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.
2. That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price, and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.
3. The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

Provides that a prosecutor is *not* required to charge any other co-participant of the organized retail theft.

Upon conviction and if probation is granted, requires the court to consider ordering as a condition of probation that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

Provides that this new section sunsets on January 1, 2021.

[Note: Already qualified for the November 2020 ballot is an initiative measure, the "Reducing Crime and Keeping California Safe Act of 2018." It does a number of things, including the following:

1. creates the felony crime of Organized Retail Theft (different language from this bill);
2. addresses serial thieves by permitting a petty theft involving a value of over $250 to be prosecuted as a felony if the offender has two specified theft-related prior convictions;
3. provides that a number of crimes shall *not* be treated as petty theft pursuant to Proposition 47's P.C. 490.2 (e.g., auto theft, access card forgery or use, elder fraud, identity theft, embezzlement, and receiving stolen property);
4. expands the list of crimes for which DNA may be collected; and
5. creates a list of felonies that disqualify an offender from Proposition 57 early parole (i.e., it defines as violent a

continued

number of felonies that involve violence but that are not included in P.C. 667.5(c)'s narrow list of violent felonies in order to expand the list of offenders not qualified for early parole).]

P.C. 29805(b)
(New Subdivision)
(Ch. 883) (AB 3129)
(Effective 1/1/2019)

Subdivision (b) is the new felony crime of a person who is convicted, on or after January 1, 2019, of a misdemeanor violation of P.C. 273.5, owning, purchasing, receiving, possessing, or controlling a firearm. The crime is a felony wobbler, punishable by 16 months, two years, or three years in state prison, or, by up to one year in jail. (This is the same punishment that is provided in subdivision (a), which applies to a defendant convicted of any one of a number of specified misdemeanors who, within 10 years of the conviction, or if he or she has an outstanding warrant, owns, purchases, receives, possesses, or controls, a firearm.)

P.C. 273.5 misdemeanors are moved from existing subdivision (a) to new subdivision (b) so that defendants convicted on or after January 1, 2019 are subject to a lifetime ban on firearms instead of only a 10-year ban.

See the Penal Code Section of this Digest for more information.

New Misdemeanors

B&P 7126
(Amended)
(Ch. 323) (AB 2705)
(Effective 1/1/2019)

Adds the following new misdemeanor crime as subdivision (b): A person *not l*icensed as a contractor who is acting like a contractor and violates, or fails to comply with, Labor Code 3700. [Labor Code 3700 requires an employer to have workers' compensation insurance. Existing Labor Code 3700.5 makes the failure of an employer to secure workers' compensation insurance a misdemeanor.]

Divides B&P 7126 into subdivisions and designates the existing misdemeanor crime in B&P 7126 as subdivision (a): A licensed contractor, or the agent or officer of a licensed contractor, violating or omitting to comply with, any provision of Article 7.5 of Chapter 9 of Division 3 of the Business and Professions Code, which pertains to the requirement that a contractor have workers' compensation insurance coverage in order to obtain, maintain, or renew a license.

Adds that the prosecution of any offense pursuant to B&P 7126 must be commenced within two years after the commission of the offense, as provided in P.C. 802. [Existing P.C. 802(d)(2) already requires B&P 7126 prosecutions to commence within two years of commission.]

Elections C. 18302
(Amended)
(Ch. 96) (AB 1678)
(Effective 7/16/2018)

Adds new misdemeanor crimes relating to false information about voting locations, voter registration qualifications, election dates, and voting days and times. Provides that it is a misdemeanor crime to, with actual knowledge and intent to deceive, distribute by mail, radio, television, telephone, text message, email, or any other electronic means, literature or any other form of communication to a voter that includes any of the following:

1. the incorrect location of a vote center, office of an elections official where voting is permitted, vote by mail drop box, or vote by mail ballot drop-off location; or
2. false or misleading information regarding the qualifications to vote or to register to vote; or
3. false or misleading information about the date of an election or the dates and times that voting may occur.

[The new misdemeanor crimes are in subdivision (b). Subdivision (a) is the existing misdemeanor crime of mailing

continued

or distributing false information about where a voter's precinct polling place is.]

[Unless there is a specific Elections Code section that provides the misdemeanor punishment for the above crimes (which this writer could not find), the crimes are punishable pursuant to P.C. 19, which provides for a punishment of up to six months in jail and/or a fine of up to $1,000. P.C. 19 provides that it applies in cases where a different misdemeanor punishment is *not* prescribed by any law of this state.]

Fish & Game C. 12012.5
(New)
(Ch. 189) (AB 2369)
(Effective 1/1/2019)

Creates a separate misdemeanor penalty, in new Fish & Game C. 12012.5, to increase the punishment for a person who holds a commercial fishing license or who operates a commercial passenger fishing boat, and who unlawfully takes a fish for commercial purposes within a marine protected area, or who knowingly facilitates another person's fishing activity within the marine protected area. Provides that this is a misdemeanor crime punishable by up to one year in jail and/or by a fine of between $5,000 and $40,000 (instead of being punishable pursuant to existing Fish & Game C. 12000 by up to six months in jail and/or by a fine of up to $1,000.)

Provides that a second or subsequent violation within 10 years of a prior violation that resulted in a conviction is punishable by up to one year in jail and/or by a fine of between $10,000 and $50,000. Also permits the Dep't of Fish and Wildlife to suspend the violator's license.

Provides that notwithstanding P.C. 802 (providing, generally, for a one-year statute of limitations for misdemeanor crimes) prosecution for a violation of new Fish & Game C. 12012.5 must be commenced within three years of the commission of the offense.

[Uncodified Section One of this bill sets forth the Legislature's declaration that existing penalties are insufficient to deter the poaching of fish in marine protected areas.]

Gov't C. 9149.30
Gov't C. 9149.31
Gov't C. 9149.32
Gov't C. 9149.33
Gov't C. 9149.34
Gov't C. 9149.35
Gov't C. 9149.36
(New)
(Ch. 2) (AB 403)
(Effective 2/5/2018)

Creates new Article 11 in Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code entitled "Legislative Employee Whistleblower Protection Act."

This Act establishes protections for a state legislative employee (which includes a volunteer, intern, fellow, or applicant) who reports legal and ethical violations, including sexual harassment, so that the report may be made without fear of retribution.

Creates two new misdemeanor crimes:

1. Gov't C. 9149.33(a): A member of the Legislature or a legislative employee directly or indirectly using or attempting to use his or her official authority or influence for the purpose of interfering with the right of a legislative employee to make a protected disclosure. Pursuant to Gov't C. 9149.33(b), this is a misdemeanor crime, punishable by up to one year in jail and a fine up of up to $10,000.
2. Gov't C. 9149.34: An individual intentionally retaliating against a legislative employee for having made a protected disclosure. Punishable by up to one year in jail and a fine of up to $10,000.

Defines "protected disclosure" as a communication by a legislative employee that is made in good faith alleging that a member of the Legislature or a legislative employee engaged in, or will engage in, activity that may constitute a violation of any law, including sexual harassment, or a violation of a legislative code of conduct; and that is made to a specified Senate or Assembly Committee, a state or local law enforcement agency, or a state agency authorized to investigate potential violations of state law.

Also provides for civil damages and attorney's fees/costs as a remedy. Provides for punitive damages if the acts of the offending party are proven to be fraudulent, oppressive, or malicious.

Gov't C. 13293.5
(New)
(Ch. 37) (AB 1817)
(Effective 6/27/2018)

Creates these new misdemeanor crimes relating to the Dep't of Finance and its authority to examine the records of state agencies and conduct audits:

continued

1. failing or refusing to permit the examination of, access to, or reproduction of records, files, documents, accounts, reports, correspondence, cash drawers, or cash by the Dep't of Finance, or in any way interfering with an examination;
2. interfering, intending to deceive or defraud, or obstructing the Dep't of Finance in its performance of an audit, evaluation, investigation, or review;
3. altering or changing records, documents, accounts, reports, or correspondence prior to or during an audit, evaluation, investigation, or review; or
4. distributing, releasing, or failing to safeguard confidential draft documents exchanged between the Dep't of Finance and the entity subject to audit, evaluation, investigation, or review, prior to the release of the Dep't of Finance's final report and without its express permission.

Provides that these misdemeanor crimes are punishable by up to six months in jail and/or by a fine of up to $1,000.

P.C. 538h
(New)
(Ch. 252) (AB 1920)
(Effective 1/1/2019)

Creates three new misdemeanor crimes relating to impersonating a member of a government managed or affiliated search and rescue team.

The three new crimes:

1. Willfully wearing, exhibiting, or using the authorized uniform, insignia, emblem, device, label, certificate, card, or writing of a government agency managed or affiliated search and rescue unit or team, with the intent of fraudulently impersonating an officer or member of that team or of fraudulently inducing the belief that he or she is an officer or member of the team, or using the same to obtain aid, money, or assistance. (Since no specific punishment is provided, existing P.C. 19 governs, and the crime is punishable by up to six months in jail and/or by a fine of up to $1,000.)

2. Willfully wearing, exhibiting, or using the badge of a government agency managed or affiliated search and rescue unit or team with the intent of fraudulently impersonating an officer or member of that team or fraudulently inducing the belief that he or she is an officer or member of that team. Punishable by up to one year in jail and/or by a fine of up to $2,000.

continued

3. Willfully wearing or using a badge that falsely purports to be authorized for use by an officer or member of a government agency managed or affiliated search and rescue unit or team, or that resembles the authorized badge as would deceive an ordinary reasonable person into believing it is authorized, for the purpose of fraudulently impersonating an officer or member of the search and rescue team, or of fraudulently inducing the belief that he or she is an officer or member of the team. Punishable by up to one year in jail and/or by a fine of up to $2,000.

[According to the legislative history of this bill, the concern being addressed is individuals and organizations falsely presenting themselves as government search and rescue entities in order to solicit monetary donations.]

Penal Code

P.C. 17
(Amended)
(Ch. 18) (AB 1941)
(Effective 1/1/2019)

Deletes the phrase "without imposition of sentence" from subdivision (b)(3) for the purpose of authorizing the court to reduce a wobbler to a misdemeanor even if the sentence had been imposed at the time probation was granted. For example, if a defendant is convicted of P.C. 245(a)(1) (assault with a deadly weapon) and probation is granted and the court also imposes and suspends the execution of a three-year midterm state prison sentence, the court would have the authority to later reduce the P.C. 245(a)(1) to a misdemeanor, despite a state prison sentence being imposed and suspended. Or if a defendant is convicted of V.C. 10851 (vehicle theft) and probation is granted and the court also imposes and suspends the execution of a P.C. 1170(h) Realignment jail sentence of two years, the court would have the authority to later reduce the V.C. 10851 to a misdemeanor despite a P.C. 1170(h) jail sentence being imposed and suspended.

[According to the legislative history of the bill, the purpose of the amendment is to provide probationers with suspended state prison or suspended P.C. 1170(h) sentences the same incentive to do well on probation that defendants convicted of wobblers have when an executed sentence is not suspended: the chance to have the felony reduced to a misdemeanor. The legislative history is written in terms of the reduction to a misdemeanor happening upon successful completion of probation, and it appears that this is how the bill was sold to the Legislature. But the actual amendment does not contain the requirement that probation be completed successfully. P.C. 17(b)(3) now provides that a crime is a misdemeanor "[w]hen the court grants probation to a defendant ~~without imposition of sentence~~ and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor." While not mentioned in the legislative history, case law had precluded a court from reducing a wobbler to a misdemeanor where there had been a state prison sentence imposed with execution suspended. (*People v. Wood* (1998) 62 Cal.App.4th 1262.)]

Expect that defendants convicted long ago who were granted probation and received state prison or P.C. 1170(h) sentences with execution suspended, to file motions for reduction.

continued

(*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 140 finds that the word "thereafter" in P.C. 17(b)(3) is not restricted to reduction during the probationary period.) However, it should be the case that a defendant who violated probation and actually had the suspended sentence imposed, cannot have a wobbler reduced to a misdemeanor:

1. existing P.C. 17(b)(1) references the misdemeanor status of a wobbler, providing that it is a misdemeanor only when a judgment *other than* imprisonment in the state prison or county jail is imposed; and
2. the legislative history is clear that the intent of the amendment to P.C. 17(b)(3) is to reward defendants who were granted probation and had executed sentences suspended, with a misdemeanor reduction if they complete probation successfully. A defendant who violated probation and had a suspended sentence actually imposed obviously did not complete probation successfully, and has necessarily had judgment imposed, which should preclude the reduction of a felony-wobbler to a misdemeanor.

P.C. 136.2
(Amended)
(Ch. 805) (AB 1735)
(Effective 1/1/2019)

Adds forced labor human trafficking (P.C. 236.1(a)), pimping where the victim is an adult (P.C. 266h(a)), and pandering where the victim is an adult (P.C. 266i(a)) to the list of offenses for which a court must consider issuing a restraining order for up to 10 years for a victim, regardless of the sentence imposed. Offenses already specified in P.C. 136.2(i) are domestic violence offenses, offenses requiring registration as a sex offender (P.C. 290 offenses), and gang crimes. Note that human sex trafficking (P.C. 236.1(b) and (c)), the pimping of a minor victim (P.C. 266h(b)), and the pandering of a minor victim (P.C. 266i(b)) are already specified in P.C. 290 and thus are already applicable crimes in P.C.136.2(i).

P.C. 188
P.C. 189
(Amended)
(Ch. 1015) (SB 1437)
(Effective 1/1/2019)

Decimates the felony murder rule and the natural and probable consequences theory of murder by providing that a participant in the perpetration or attempted perpetration of a felony specified in P.C. 189 in which a death occurs, is liable for murder only if one of the following is proven:

1. the person was the actual killer;
2. the person was not the actual killer, but with the intent to kill, aided, abetted, counseled, commanded, induced,

continued

solicited, requested, or assisted the actual killer in the commission of murder in the first degree; or
3. the person was a major participant in the underlying felony and acted with reckless indifference to human life.

(Previously, a perpetrator involved in the commission of a felony enumerated in P.C. 189 where a death results, even if accidental, was liable for first degree murder. Now, one of the three factors above must be proved in order to hold a participant in a specified felony, liable for murder.)

Provides that the above limitations do *not* apply to a defendant when the victim is a peace officer who was killed while in the course of his or her duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his or her duties. (Therefore, the felony murder rule still applies to a person involved in the killing of a peace officer.)

Amends P.C. 188 to provide that except for the three scenarios specified above, in order to be convicted of murder, a principal in a crime must act with malice aforethought. Specifically prohibits malice from being imputed to a person based solely on his or her participation in a crime. Retains the current definitions of both express malice and implied malice. While second-degree felony murder (which applies to inherently dangerous felonies) is not specifically addressed, the prohibition on imputing malice based solely on participation in a crime would prevent imputing malice based solely on participation in an inherently dangerous felony.

Retroactivity: It is clear that these new provisions are to be applied retroactively to every pending case, no matter when the murder was committed. And the bill creates new P.C. 1170.95, which sets forth procedures for any person convicted of murder on a felony murder theory or on a natural and probable consequences theory, to file a petition to have the murder conviction vacated and to be re-sentenced, no matter how old the murder conviction is or whether the defendant finished the sentence long ago. See P.C. 1170.95.

Notes: Care should be taken to prove one or more of the factors specified above at a preliminary hearing, grand jury indictment proceeding, or trial, and to have the trier of fact make specific findings. Any defendant who pleads guilty

continued

or no contest to murder should be required to specifically admit to one or more of the factors. Consider adding one or more factors to the charging document, or alleging all three factors with the conjunctive "and" so that the defendant is on notice that he or she has to defend against all three theories. Law enforcement officers who take statements from murder suspects should obtain detailed statements and ask questions related to the above factors. A P.C. 187 murder case that is dismissed after preliminary hearing and before trial because no evidence or insufficient evidence was introduced on any of the three factors can be refiled pursuant to P.C. 1387 (permitting a felony to be refiled after one dismissal) or even pursuant to P.C. 1387.1 (permitting the refiling of a violent felony after two dismissals if either of the dismissals was due to excusable neglect.) This bill is effective January 1, 2019, so it seems logical that the failure to introduce evidence of the three factors at a preliminary hearing held before 2019 would be deemed excusable. There may be challenges to the constitutionality of these amendments based on Proposition 7 (1978) and Proposition 115 (1990), but that discussion is beyond the scope of this publication and beyond this writer's expertise.

[Uncodified Section One of this bill sets forth the Legislature's declaration that a person should be punished according to his or her level of individual culpability, and that reform is needed to address individual culpability and assist in the reduction of the prison population. The Legislature also states that it is necessary to amend the felony murder rule and the natural and probable consequences doctrine as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.]

P.C. 287
(Re-numbered from P.C. 288a)
(Ch. 423) (SB 1494)
(Effective 1/1/2019)

Re-numbers P.C. 288a (oral copulation crimes) to new P.C. 287 without substantive amendment. This bill amends numerous other Penal Code sections and sections in other California codes to change cross-references from P.C. 288a to P.C. 287 and to add the word "former" before "288a."

P.C. 288
(Amended)
(Ch. 70) (AB 1934)
(Effective 1/1/2019)

Revises the definition of "dependent person" to clarify that a person qualifies as a dependent person regardless of whether he or she lives independently.

(P.C. 288(b)(2) remains the felony crime of a caretaker committing a lewd or lascivious act on a dependent person by force. P.C. 288(c)(2) remains the felony crime of committing a lewd or lascivious act on a dependent person without force.)

[According to the legislative history of this bill, its purpose is to ensure that law enforcement, social workers, dependent persons themselves, and their families understand that dependent persons are protected by laws pertaining to dependent persons even if they live independently.]

P.C. 288a
(Re-numbered to new P.C. 287)
(Ch. 423) (AB 1494)
(Effective 1/1/2019)

Re-numbers P.C. 288a (oral copulation crimes) to new P.C. 287 without substantive amendment. This bill amends numerous other Penal Code sections and sections in other California codes to change cross-references from P.C. 288a to P.C. 287 and to add the word "former" before "288a."

P.C. 290.007
(Amended)
(Ch. 979) (SB 1050)
(Effective 1/1/2019)

Adds a second way a sex offender may be relieved of the duty to register as a sex offender besides obtaining a certificate of rehabilitation and being relieved of the duty to register pursuant to P.C. 290.5: being exonerated of the conviction that requires registration, and the person is not otherwise required to register. Defines exoneration in terms of P.C. 3007.05(e), which provides that a person is exonerated when, after conviction, a writ of habeas corpus is granted on the basis that the evidence unerringly points to innocence; or the conviction is reversed on appeal for insufficiency of the evidence; or a writ of habeas corpus is granted pursuant to P.C. 1473 (false evidence or new evidence); or, the person is given an "absolute pardon" by the Governor on the basis of the person being innocent.

[Existing P.C. 290.5 provides that for some offenses, a certificate of rehabilitation alone will relieve a person of the duty to register if he or she is not in custody, on parole, or on probation. For other specified sex offenses, an actual pardon is required in order to be relieved of registration obligations.]

P.C. 290.013
(Amended)
(Ch. 811) (AB 1994)
(Effective 1/1/2019)

Adds county and local custodial facilities to the specified agencies (CDCR and state mental institutions) that are required to notify DOJ about a registered sex offender's change of address (i.e., they are required to tell DOJ that the sex offender is now residing in their facility).

Adds that these agencies must also notify DOJ when a sex offender is *released* from custody.

Shortens the time for notification to DOJ about admission or release, from 90 days to 15 working days.

[P.C. 290.013(d) continues to require DOJ to forward change of address information to the agency with which the sex offender last registered.]

P.C. 320.6
(Amended)
(Ch. 575) (AB 888)
(Effective 9/20/2018)

Extends, from December 31, 2018, to January 1, 2024, the sunset date on this section that permits specified non-profit organizations to operate 50/50 charity raffles (50 percent of gross receipts are required to be used for charitable purposes and 50 percent goes to the winner).

Existing P.C. 320.5 is a general statute that permits non-profit organizations to operate 90/10 charitable raffles. It has no sunset date.

P.C. 320.6 applies specifically to non-profit organizations established by or affiliated with professional sports leagues: Major League Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League, Major League Soccer, the Professional Golfers' Association, the Ladies Professional Golf Association, and the National Association for Stock Car Auto Racing.

Increases, from $5,000 to $10,000, the minimum annual registration fee that DOJ may charge an organization to cover the reasonable costs to administer and enforce this section. Increases, from $100 to $200, the fee an organization must pay for every individual raffle conducted. Increases, from $5,000 to $10,000, the minimum annual registration fee that DOJ may charge a manufacturer or distributor of raffle-related products. Increases, from $10 to $20, the annual registration fee that DOJ may charge a person who conducts the manual raffle draw.

continued

Requires organizations to post information on the Web regarding gross receipts generated from the sale of raffle tickets, the amount each eligible recipient organization received, the prize total, the winning ticket number, and whether the prize was claimed.

Revises the list of information that organizations are required to file with DOJ each year.

Provides that DOJ is entitled to reimbursement from a charity raffle registrant for all actual and reasonable costs incurred in auditing, reviewing, and evaluating the raffle reports being audited.

P.C. 368
(Amended)
(Ch. 70) (AB 1934)
(Effective 1/1/2019)

Revises the definition of "dependent adult" to clarify that a person qualifies as a dependent adult regardless of whether he or she lives independently.

(P.C. 368 contains crimes pertaining to both the physical abuse and financial abuse of elders and dependent adults.)

Revises subdivision (a), which had contained the Legislature's findings and declarations that crimes against elders and dependent adults deserve special consideration because elders and dependent adults may be confused, on medication, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, report criminal conduct, or testify in court. Now subdivision (a) contains these legislative findings and declarations: Elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.

[According to the legislative history of this bill, its purpose is to ensure that law enforcement, social workers, dependent adults themselves, and their families understand that dependent adults are protected by laws pertaining to dependent adults even if they live independently.]

P.C. 368.5
(Amended)
(Ch. 513) (SB 1191)
(Effective 1/1/2019)

Requires local law enforcement agencies and long-term care ombudsman programs that already have policy manuals to include the following *when they next revise those manuals*:

1. The elements of the offense specified in P.C. 368(c). (P.C. 368(c) is the misdemeanor crime of a person, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causing or permitting an elder or dependent adult to suffer, or inflicting unjustifiable physical pain or mental suffering, or having the care or custody of an elder or dependent adult, willfully causing or permitting the person or health of the elder or dependent adult to be injured or willfully causing or permitting the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered.)
2. The elements of P.C. 368(f). (P.C. 368(f) is the felony crime of committing false imprisonment of an elder or dependent adult by violence, menace, fraud, or deceit.)
3. The requirement, pursuant to existing P.C. 368.5(a) and (b), that law enforcement agencies have the responsibility for the criminal investigation of elder and dependent adult abuse and criminal neglect; and that adult protective services agencies and long-term care ombudsman programs have authority to investigate incidents of elder and dependent adult abuse and neglect and may, if requested, assist law enforcement agencies with criminal investigations.
4. The definition of elder and dependent adult abuse provided by DOJ in its March 2015 policy and procedure manual: "abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."

Provides that this amendment does not require a long-term care ombudsman program that does not have a policy manual, to create or adopt a policy manual.

Defines "local law enforcement agency" as every municipal police department and county sheriff's department.

Defines "policy manual" as any general orders, patrol manual, duty manual, or other written document that

continued

provides field or investigative personnel with policies, procedures, or guidelines for responding to or investigating crimes, complaints, or incidents.

[It is odd that the bill does not simply require that **all** crimes in P.C. 368 be mentioned in a law enforcement policy: felony abuse/neglect, misdemeanor abuse/neglect, false imprisonment, financial abuse by a non-caretaker, and financial abuse by a caretaker. According to the legislative history of this bill, proponents say that there have been a number of instances in which the false imprisonment or forced isolation of an elder or dependent adult has been treated as a civil matter instead of a criminal matter. One example cited is a conservator preventing family from visiting a conserved elder/dependent adult in an assisted living facility. This bill appears to be an attempt to educate law enforcement about the lesser known provisions of P.C. 368.]

P.C. 396
(Amended)
(Ch. 631) (AB 1919)
(Effective 1/1/2019)

Expands the misdemeanor crime of price gouging by adding rental housing to the list of items (consumer goods such as food, water, medicine, and fuel; construction services; hotel and motel rates, etc.) for which it is illegal to increase the price on an existing or prospective tenant by more than 10 percent during a declared state of emergency and for a specified period of time after a state of emergency is declared. Exempts situations where a rent increase was contractually agreed to by a tenant before a state of emergency was declared.

Further expands this misdemeanor crime by prohibiting the eviction of a residential tenant during a declared state of emergency and then renting or offering to rent to another person at a rental price greater than the evicted tenant could be charged under this section.

Provides that it is not a violation to continue an eviction process that was lawfully begun prior to a declaration of a state of emergency. Also provides that an owner is not prohibited from evicting a tenant for a lawful reason, including the reasons in C.C.P. 1161 (e.g., failing to pay rent, using the premises for an unlawful purpose, expired lease.)

Provides a lengthy definition of "rental price" with various scenarios that depend on when housing is rented in relation

continued

to when a state of emergency is declared (e.g., housing rented one year before a state of emergency, housing that becomes vacant during a state of emergency). Provides a specific definition of "rental price" for mobile home spaces.

Continues to provide that the misdemeanor crimes specified in this section are punishable by up to one year in jail and/or by a fine of up to $10,000.

Continues to provide that a violation also constitutes an unlawful business practice and an act of unfair competition with the meaning of B&P 17200.

P.C. 401
(Amended)
(Ch. 245) (AB 282)
(Effective 1/1/2019)

Adds an exception to the felony crime of aiding, advising, or encouraging another person to commit suicide: actions that are compliant with the End of Life Option Act (H&S 443-443.22). This amendment makes P.C. 401 consistent with the End of Life Option Act, which became effective June 9, 2016, and permits an adult with a terminal disease to request a prescription for an aid-in-dying drug and to ingest that drug.

[The Act provides immunity from civil and criminal liability for persons present when a terminally ill person ingests the drug or who help prepare the drug, as long as they do not assist with the actual ingestion of the drug. The Act also provides that health care providers shall not be subject to civil, criminal, administrative, disciplinary, or employment penalty or sanction, for participating in good faith compliance with the Act.]

P.C. 422.56
(Amended)
(Ch. 26) (AB 1985)
(Effective 1/1/2019)

Clarifies that the definition of mental disability and physical disability for purposes of hate crimes includes disabilities that are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness. Provides that this amendment is declaratory of existing law.

This bill also creates new P.C. 422.87, pertaining to law enforcement agency hate crimes policies.

[In uncodified Section One of this bill, the Legislature declares that there are 79 hate groups in California, mostly in the San Francisco Bay Area, Sacramento, and Los Angeles; that hate crimes increased from 2015 to 2016, and that it is the intent of the Legislature to protect Californians by

continued

"updating and upgrading" enforcement of hate crime laws and by standardizing procedures in law enforcement agencies throughout the state.]

P.C. 422.87
(New)
(Ch. 26) (AB 1985)
(Effective 1/1/2019)

Requires a law enforcement agency that adopts a new hate crimes policy, or updates an existing hate crimes policy, to include all of the following:

1. The definitions in P.C. 422.55 and 422.56 (e.g., hate crime, disability, gender, nationality, race, religion, and "association with a person or group with these actual or perceived characteristics").

2. The content of the model policy framework that the Commission on Peace Officer Standards and Training (POST) developed pursuant to existing P.C. 13519.6 and any future revisions or additions that POST makes to the policy.

3. Information regarding bias motivation. Defines "bias motivation" as a preexisting negative attitude toward actual or perceived characteristics referenced in P.C. 422.55. Provides that bias motivation may include hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as weak, worthless, or fair game because of a protected characteristic such as disability or gender. Requires the policy to advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations. Requires the policy to advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and if so, if this perception is grounded, in whole or in part, in anti-disability bias. Provides that this includes situations where a perpetrator targets a person

continued

with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, which might indicate that the crime is a hate crime rather than a crime of opportunity.

4. Information regarding the general underreporting of hate crimes and a plan for the agency to remedy underreporting.

5. A protocol for reporting suspected hate crimes to DOJ pursuant to existing P.C. 13023.

6. A checklist of first responder responsibilities, including being sensitive to the effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving victims and interested persons the agency's hate crimes brochure, as required by existing P.C. 422.92.

7. A specific procedure for transmitting and periodically re-transmitting the hate crimes policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.

8. The title(s) of the officer(s) responsible for assuring that the agency has a hate crimes brochure as required by existing P.C. 422.92 and ensuring that all officers are trained to distribute the brochure to all suspected hate crimes victims and interested persons.

9. A requirement that all officers be familiar with the hate crimes policy and carry it out unless directed otherwise.

This bill also amends P.C. 422.56, pertaining to the definition of "disability" for purposes of hate crimes.

[In uncodified Section One of this bill, the Legislature declares that there are 79 hate groups in California, mostly in the San Francisco Bay Area, Sacramento, and Los Angeles; that hate crimes increased from 2015 to 2016, and that it is the intent of the Legislature to protect Californians by

continued

"updating and upgrading" enforcement of hate crime laws and by standardizing procedures in law enforcement agencies throughout the state.]

P.C. 451.5
(Amended)
(Ch. 619) (SB 896)
(Effective 1/1/2019)

Extends, from January 1, 2019 to January 1, 2024, the version of aggravated arson that applies to property damage, the cost of fire suppression, and other losses caused by fire that exceed a specified threshold. This bill increases the threshold from in excess of $7 million to in excess of $8.3 million. Aggravated arson continues to carry a penalty of 10 years to life and continues to apply to a person convicted of arson who has a prior conviction for arson within the past 10 years and to a person convicted of arson where the fire caused damage or destruction to five or more inhabited structures. Without further action by the Legislature, on January 1, 2024, this new version of P.C. 451.5 will sunset and a version of 451.5 will be in effect that does *not* include property damage and fire suppression costs that exceed $8.3 million. It will apply only to arsonists with a prior arson conviction within 10 years and to arsonists who damage or destroy five or more inhabited structures.

P.C. 463
(Amended)
(Ch. 132) (AB 3078)
(Effective 1/1/2019)

Expands the crime of looting to include theft crimes committed while an area is under *an evacuation order*. Continues to apply to second degree burglary, petty theft, and grand theft crimes committed during a state of emergency or local emergency resulting from an earthquake, fire, flood, riot, or other natural or man made disaster. Now looting also includes these crimes committed in an area that is under an evacuation order due to earthquake, fire, flood, riot, or other natural or man made disaster. Continues to require a minimum jail sentence (180 days jail for second degree burglary or grand theft if probation is granted; 90 days jail for petty theft if probation is granted) unless a court specifies reasons for reducing or eliminating that jail sentence. Continues to specifically authorize a court to impose community service hours in addition to jail.

Defines "evacuation order" as an order from the Governor, a county sheriff, a chief of police, or a fire marshal under which persons are required to relocate outside of the geographic area covered by the order due to imminent danger resulting from an earthquake, fire, flood, riot, or other natural or man-made disaster.

continued

The legislative history of this bill cites the property crimes committed during the Northern California wildfires of 2017 after residents were ordered to evacuate, and during the evacuation of Oroville in February 2017 when authorities were concerned that the Oroville Dam would break because of heavy rains.

P.C. 490.4
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Creates the new felony/misdemeanor crime of Organized Retail Theft.

Provides that organized retail theft can be committed in four different ways:

1. acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace, with the intent to sell, exchange, or return merchandise for value; or
2. acting in concert with two or more persons to receive, purchase, or possess merchandise, knowing or believing it to have been stolen; or
3. acting as an agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft; or
4. recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake any of the acts described in #1 or #2, above, or any other statute defining theft of merchandise.

Punishment
A violation of #1, #2, or #3 committed on two or more separate occasions within a 12-month period and where the aggregated value of the merchandise stolen, received, purchased, or possessed is more than $950, is punishable as a felony by 16 months, two years, or three years in the county jail pursuant to P.C. 1170(h), or as a misdemeanor by up to one year in jail.

Any other violation of #1, #2, or #3 that is not described above is a misdemeanor punishable by up to one year in jail.

A violation of #4 is punishable as a felony by 16 months, two years, or three years in county jail pursuant to P.C. 1170(h), or as a misdemeanor by up to one year in jail.

continued

Acting in Concert
Provides that for the purpose of determining whether a defendant acted in concert, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

1. The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.
2. That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.
3. The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

Provides that a prosecutor is *not* required to charge any other co-participant of the organized retail theft.

Upon conviction and if probation is granted, requires the court to consider ordering as a condition of probation that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

Provides that this new section sunsets on January 1, 2021.

This bill adds a new P.C. 786.5 pertaining to jurisdiction (see below) and a new P.C. 1001.81 pertaining to a diversion or deferred entry of judgment program for repeat theft offenses (see below). It also amends P.C. 853.6 to expand the list of reasons an arresting officer may cite for not releasing a person arrested for a misdemeanor and amends P.C. 978.5 to expand the list of circumstances for which a judge may issue a bench warrant for failure to appear in court. See below.

[Note: Already qualified for the November 2020 ballot is an initiative measure, the "Reducing Crime and Keeping California Safe Act of 2018." It does a number of things, including the following:

continued

1. creates the felony crime of organized retail theft (different language from this bill);
2. addresses serial thieves by permitting a petty theft involving a value of over $250 to be prosecuted as a felony if the offender has two specified theft-related prior convictions;
3. provides that a number of crimes shall *not* be treated as petty theft pursuant to Proposition 47's P.C. 490.2 (e.g., auto theft, access card forgery or use, elder fraud, identity theft, embezzlement, and receiving stolen property);
4. expands the list of crimes for which DNA may be collected; and
5. creates a list of felonies that disqualify an offender from Proposition 57 early parole (i.e., it defines as violent a number of felonies that involve violence but that are not included in P.C. 667.5(c)'s narrow list of violent felonies in order to expand the list of offenders not qualified for early parole).]

P.C. 538h
(New)
(Ch. 252) (AB 1920)
(Effective 1/1/2019)

Creates three new misdemeanor crimes relating to impersonating a member of a government managed or affiliated search and rescue team.

The three new crimes:

1. Willfully wearing, exhibiting, or using the authorized uniform, insignia, emblem, device, label, certificate, card, or writing of a government agency managed or affiliated search and rescue unit or team, with the intent of fraudulently impersonating an officer or member of that team or of fraudulently inducing the belief that he or she is an officer or member of the team, or using the same to obtain aid, money, or assistance. (Since no specific punishment is provided, existing P.C. 19 governs, and the crime is punishable by up to six months in jail and/or by a fine of up to $1,000.)
2. Willfully wearing, exhibiting, or using the badge of a government agency managed or affiliated search and rescue unit or team with the intent of fraudulently impersonating an officer or member of that team or fraudulently inducing the belief that he or she is an officer or member of that team. Punishable by up to one year in jail and/or by a fine of up to $2,000.
3. Willfully wearing or using a badge that falsely purports to be authorized for use by an officer or member of a

continued

government agency managed or affiliated search and rescue unit or team, or that resembles the authorized badge as would deceive an ordinary reasonable person into believing it is authorized, for the purpose of fraudulently impersonating an officer or member of the search and rescue team, or of fraudulently inducing the belief that he or she is an officer or member of the team. Punishable by up to one year in jail and/or by a fine of up to $2,000.

[According to the legislative history of this bill, the concern being addressed is individuals and organizations falsely presenting themselves as government search and rescue entities in order to solicit monetary donations.]

P.C. 597.9
(Amended)
(Ch. 877) (AB 2774)
(Effective 1/1/2019)

Permits an animal shelter administered by a public animal control agency, a humane society, a society for the prevention of cruelty to animals, an animal rescue organization, or an animal adoption organization to ask a person who is attempting to adopt an animal whether he or she is prohibited from owning, possessing, maintaining, having custody of, or residing with an animal.

Existing provisions in P.C. 597.9 prohibit persons who are convicted of specified animal abuse crimes from owning, possessing, maintaining, etc., an animal for five years if the conviction is a misdemeanor and for 10 years if the conviction is a felony. Violation of either prohibition is an infraction punishable by a fine of $1,000. The original version of this bill would have required DOJ to make animal abuse conviction information available to law enforcement agencies, animal shelters, pet dealers, and animal adoption centers in order to prevent prohibited persons from acquiring an animal. It would have also created a funding mechanism for the program by imposing an additional fine of $200 for misdemeanor animal abuse convictions and $500 for felony animal abuse convictions. The bill was watered down to simply permitting various animal agencies to ask a person if he or she is prohibited from owning or possessing an animal.

P.C. 621
(Amended)
(Ch. 549) (AB 2801)
(Effective 1/1/2019)

Adds that this section, which is the felony/misdemeanor crime of maliciously destroying, cutting, breaking, mutilating, injuring, tearing down, or removing *a law enforcement memorial or firefighter's memorial,* does *not* preclude prosecution under any other provision of law, including Military & Vets C. 1318, which is the almost identical felony/misdemeanor crime of vandalizing a *veteran's memorial.*

[The original version of this bill and some subsequent amendments added veterans' memorials to P.C. 621. But veterans' memorials were later removed from the final version of P.C. 621. Thus, the specific reference to Military & Vets C. 1318 does not make sense, because it is limited to destroying, mutilating, injuring, etc., a *veteran's memorial* and does not apply to a law enforcement or firefighter memorial.]

P.C. 629.52
(Amended)
(Ch. 294) (AB 1948)
(Effective 1/1/2019)

Adds fentanyl (a synthetic opioid) to the list of controlled substances (e.g., heroin, cocaine, PCP, methamphetamine) for which law enforcement may obtain a wiretap order. Fentanyl is added to subdivision (a)(1) of P.C. 629.52, which permits a wiretap order for the importation, possession for sale, transportation, manufacture, or sale of a specified controlled substance in violation of H&S 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6, where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

P.C. 633
(Amended)
(Ch. 175) (AB 2669)
(Effective 1/1/2019)

Adds peace officers of CDCR's Office of Internal Affairs to the list of persons (district attorneys, Attorney General, CHP officers, chiefs of police, sheriffs) who are exempted from the prohibition on overhearing or recording communications, and may overhear or record any communication that they could lawfully overhear or record prior to the prohibitions on eavesdropping and recording becoming effective on January 1, 1968.

P.C. 647
(Amended)
(Ch. 246) (AB 324)
(Effective 1/1/2019)

Amends P.C. 647(j)(2) and (j)(3) to define the element "identifiable" for these crimes that prohibit the secret recording or filming of an identifiable person for the purpose of viewing his or her body or undergarments. Defines "identifiable" as "capable of identification, or capable of being recognized, meaning that someone could identify

continued

or recognize the victim, including the victim herself or himself. It does not require the victim's identity to actually be established."

This amendment codifies the definition of "identifiable" in the case of *People v. Johnson* (2015) 234 Cal.App.4th 1432, and uncodified Section One of the bill states that this is indeed the Legislature's intent. In *Johnson*, the appellate court reversed five of 12 convictions for P.C. 647(j)(2) because the trial court did not define "identifiable," and ruled that in order to establish that an identifiable person has been recorded, the prosecution need not prove that the victim has actually been identified, located, or named, but must prove beyond a reasonable doubt that when all of the evidence is considered, it is reasonably probable that someone, including the victim, could identify or recognize the victim. (The defendant's phone contained over 100 up-skirt videos and pictures. At the trial, the prosecution argued that "identifiable" meant that the person could be identified as a human being as opposed to a doll. The defense attorney argued that there had to be something in the recording that made the person subject to identification.) The *Johnson* court also said

> [i]f the only evidence of the crime is a recorded image that includes no unique or identifying characteristics, and there is no evidence extrinsic to the image the defendant recorded, such that it is not reasonably probable even a victim could recognize herself or himself from the evidence, the People will be unable to establish the "identifiable person" element of a section 647, subdivision (j)(2) violation.

P.C. 653.1
(Amended)
(Ch. 262) (AB 2450)
(Effective 1/1/2019)

Removes provisions relating to balloons that are constructed of electrically conductive material (e.g., mylar balloons), puts them into new Business and Professions Code 22942, and makes them subject to civil penalties instead of criminal penalties.

Former subdivision (d) in P.C. 653.1 (now subdivision (a)) is the only crime remaining in P.C. 653.1. It continues to prohibit the releasing outdoors of a balloon made of electrically conductive material (e.g., a mylar balloon) that is filled with a gas lighter than air (e.g., helium), as part of a public or civic event, promotional activity, or product

continued

advertisement. Continues to provide that this crime is an infraction punishable by a fine of up to $100 and that a third violation is a misdemeanor. Also continues to provide that P.C. 653.1 does not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects. [See B&P 22942 in the Business and Professions Code Section of this Digest for the manufacturing, selling, and distributing conduct that is now subject to civil penalties.]

[According to the legislative history of this bill, the purpose of moving balloon provisions to the Business and Professions Code is so that district attorneys, county counsels, and city attorneys/prosecutors can bring B&P 17200 unfair competition actions to obtain civil penalties of up to $2,500 instead of being limited to prosecuting an infraction crime with a fine of up to only $100. Existing B&P 17206 provides that a person who engages in unfair competition is liable for a civil penalty of up to $2,500 for each violation which shall be recovered in an action brought by a district attorney, county counsel, city attorney, city prosecutor, or the Attorney General.]

[The legislative history of this bill details the fire danger of mylar balloons contacting power lines, and the power outages they cause. Southern California Edison reported that metallic balloon-related outages are on the rise and that it handled 1,094 mylar balloon-related outages in 2017. PG&E reported 456 mylar balloon outages in 2017.]

P.C. 667
(Amended)
(Ch. 1013) (SB 1393)
(Effective 1/1/2019)

Amends P.C. 667(a) to eliminate the cross-reference to P.C. 1385(b), which had incorporated into P.C. 667 the prohibition (P.C. 1385(b)) on judges striking five-year serious felony prior conviction enhancements (Proposition 8 priors). The phrase "[i]n compliance with subdivision (b) of Section 1385" is eliminated. See P.C. 1385, below, for more information about why SB 1393 may not be a valid amendment because it failed to receive a two-thirds vote in the Legislature.

P.C. 680.4
(New)
(Ch. 950) (AB 3118)
(Effective 1/1/2019)

Requires every law enforcement agency, medical facility, crime lab, or any other facility that receives, maintains, stores, or preserves sexual assault evidence kits ("rape kits") to conduct an audit of all **un**tested kits in their possession and by July 1, 2019, report to DOJ specified information for each kit. If the victim is pursuing prosecution, the audit must

continued

include the date the kit was collected, the date the kit was picked up by a law enforcement agency, the date the kit was delivered to a crime lab, and the reason the kit has not been tested. For kits involving victims who have chosen not to pursue prosecution at the time of the audit, only the number of untested kits needs to be reported.

Requires DOJ to prepare and submit a summary report to the Legislature by July 1, 2020.

[According to the legislative history, the purpose of this bill is to understand the extent of the rape kit backlog in California. It is believed that there are at least 13,000 untested rape kits.]

P.C. 688.5
(New)
(Ch. 264) (AB 2495)
(Effective 1/1/2019)

Prohibits counties and cities, and attorneys acting on behalf of counties or cities, from charging a defendant for the costs of investigation, prosecution, or appeal in a criminal case, except where a state law permits the recovery of these costs, or where such costs are ordered by the court for a state law violation, or when the case involves one of the statutes listed as an exception.

Provides that this prohibition on charging for costs includes a "criminal violation of a local ordinance." Specifically provides that this new section does not apply in any civil action or civil proceeding.

[According to the legislative history, the purpose of the bill is to prohibit cities and counties from sending huge bills (thousands of dollars) for attorney and investigator work hours to individuals convicted of local code enforcement violations (e.g., nuisance violations, building without a permit, illegal dumping). *However,* instead of limiting the language of the bill to local ordinances, the bill prohibits charging for prosecution and investigation costs in all criminal cases, including criminal violations of a local ordinance, and then lists a number of specific exceptions *and* two broad exceptions. The broad exceptions are:

1. a violation of any state law where recovery of the costs of prosecution and investigation are authorized by statute; and
2. a violation of state law for which such costs are ordered by a court.]

It appears that there really is not a ban on charging for prosecution and investigation costs for state crimes, because

continued

if a statute authorizes such costs, they can be charged, and, the exception specifically provides that the charging of costs is not prohibited if a court orders such costs for the conviction of a state crime. It would have been much simpler for the Legislature to simply have enacted a ban on cities and counties charging for the costs of attorney and law enforcement time when a person is convicted of violating a local ordinance.

Defines "costs" in terms of wages/compensation: the salary, fees, and hourly rate paid to attorneys, law enforcement, and inspectors for hours spent either investigating or enforcing the charged crime. Provides that costs do *not* include the costs to remediate, abate, restore, or clean up harm caused by criminal conduct.

Provides that this new section does *not* affect the authority of a probation department to assess and collect fees or other charges authorized by statute (e.g., P.C. 1203.1b authorizes probation supervision fees, mandatory supervision fees, and a fee for the preparation of a presentence report.)

Specifies a number of criminal case exceptions:

1. P.C. 186.8 (forfeiture of money or property pursuant to the California Control of Profits of Organized Crime Act);
2. P.C. 186.11 (aggravated white collar crime enhancement, and freeze and seize provisions);
3. P.C. 670 (fraud committed in connection with damage caused by a natural disaster);
4. Costs ordered by the court pursuant to H&S 17062(d)(1) (employee housing violations);
5. Insurance Code 1871.4 (insurance fraud);
6. Labor Code 3700.5 (failure to obtain workers' compensation insurance);
7. Revenue & Tax. C. 19542.3, 19701, 19701.5, 19705, 19706, 19720, 19721, 30165.1, 30482, 38800, 46701, 46702, 46704, or 46705 (various tax violations);
8. Unempl. Ins. C. 2126 (which permits a convicted person or entity to be charged the costs of investigation and prosecution at the discretion of the court, for unemployment insurance crimes specified in Unempl. Ins. C. 2101–2129; and
9. "A violation of any other provision of state law where recovery of the costs of investigation, prosecution, or appeal in a criminal case is specifically authorized by statute or ordered by a court. This paragraph does not apply to a local ordinance."

P.C. 784.7
(Amended)
(Ch. 962) (AB 1746)
(Effective 1/1/2019)

Amends subdivision (b) to add P.C. 243.4 (sexual battery) and P.C. 261.5 (unlawful sexual intercourse) to the list of crimes (physical child abuse, domestic violence, and stalking) for which offenses occurring in more than one jurisdictional territory may be tried together in any county where at least one offense occurred, if the defendant and the victim are the same for all of the offenses.

Makes a technical amendment to subdivision (a) (which permits various sex offenses occurring in more than one jurisdiction to be tried together in any county where at least one offense occurred) by adding a reference to P.C. 287 (oral copulation), which has been renumbered *from* P.C. 288a, effective 1/1/2019. Subdivision (a) now lists P.C. 287 as one of the sex offenses it applies to, along with "former Section 288a." (SB 1494 renumbers P.C. 288a to P.C. 287, effective January 1, 2019.)

P.C. 786.5
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Provides that the jurisdiction for the crime of theft, as defined in P.C. 484(a), or in new P.C. 490.4 (organized retail theft, see above), or P.C. 496 (receiving or possessing stolen property), includes the county where the theft or receipt of 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 a theft offense, P.C. 490.4, 496, or in abetting the parties.

Provides that if multiple offenses of theft, P.C. 490.4, or 496 occur in multiple jurisdictions, and either all involve the same defendant or defendants and the same merchandise **or** all involve the same defendant or defendants and the same scheme or substantially similar activity, then any of the jurisdictions is a proper jurisdiction for all offenses. Also provides that jurisdiction extends to all "associated offenses" connected together in their commission to the underlying theft, P.C. 490.4, or 496 offenses.

Provides that this new section sunsets on January 1, 2021.

P.C. 801.6
(Amended)
(Ch. 943) (AB 2302)
(Effective 1/1/2019)

Increases, from one year to five years, the statute of limitations for P.C. 11166 crimes involving the failure of a mandated reporter to report an incident of known or reasonably suspected sexual assault as defined in existing

continued

P.C. 11165.1. P.C. 11165.1 defines "sexual assault" in terms of code sections (P.C. 261, 261.5(d), 264.1, 285, 286, 288(a), 288(b), 288(c)(1), 288a, 289, 647.6) and in terms of descriptions such as the intentional masturbation of the perpetrator's genitals in the presence of a child.

P.C. 11166(c) is the misdemeanor crime of a mandated reporter failing to report an incident of known or reasonably suspected child abuse or neglect. Existing P.C. 11165.6 includes sexual abuse in the definition of "child abuse or neglect." P.C. 11166(c) continues to be punishable by up to six months in jail. It also continues to provide that a mandated reporter intentionally concealing his or her failure to report is a continuing offense until a specified agency discovers the offense. Thus, charges would have to be filed within one year of the agency discovering the offense, unless the failure to report relates to sexual assault, in which case the five-year statute of limitations in amended P.C. 801.6 would apply. (Existing P.C. 802(a) provides for a general one-year statute of limitations for misdemeanor crimes unless an exception applies.)

[P.C. 801.6 continues to specify that elder and dependent adult abuse crimes in P.C. 368, except theft or embezzlement, have a five-year statute of limitations.]

P.C. 817
(Amended)
(Ch. 176) (AB 2710)
(Effective 1/1/2019)

Eliminates the requirement of any telephone conversation between a magistrate and an officer/declarant during the obtaining of an arrest warrant, including an oral oath over the telephone from an officer (declarant), so that an arrest warrant may be issued completely electronically by facsimile, email, or computer server. Requires the officer/declarant to sign under penalty of perjury his or her declaration in support of the arrest warrant, with the signature being a digital or electronic signature if email or computer server are used to obtain the warrant.

Continues to permit the magistrate to accept an oral statement made under penalty of perjury that is recorded and transcribed. Continues to provide a magistrate with the discretion to examine under oath the person seeking the warrant and any witness that may be produced.

Provides that a warrant signed by a magistrate and received by the declarant is deemed to be the original warrant.

continued

This bill also makes similar amendments to P.C. 1526 regarding search warrants. See P.C. 1526, below.

[According to the legislative history of this bill, its purpose is to make the arrest warrant process faster and more efficient.]

P.C. 830.11
(Amended)
(Ch. 138) (AB 873)
(Effective 1/1/2019)

Adds persons employed by the Dep't of Food and Agriculture and designated as investigators whose primary duty is the enforcement of, and investigations relating to, Division 10 of the Business and Professions Code (Cannabis: B&P 26000–26231.2) to the list of persons who are not peace officers but may exercise the power of arrest and the power to serve search warrants within the scope of their employment if they take a course in the exercise of those powers.

[Pursuant to existing B&P 26012(a)(2), the Dep't of Food and Agriculture is tasked with administering cannabis provisions related to cultivation and has the authority to create, issue, deny, suspend, or revoke cultivation licenses.]

P.C. 831.5
(Amended)
(Ch. 19) (AB 2197)
(Effective 1/1/2019)

Adds Madera County to this section that pertains to custodial officers. New subdivision (i) (Madera County) is identical to existing subdivision (h) (Napa County) and almost identical to existing subdivision (g) (Santa Clara County). New subdivision (i) provides that upon a resolution of the Madera County Board of Supervisors, custodial officers employed by the Madera County Dep't of Corrections are authorized to perform all of these duties in a Madera County facility: arresting a person without a warrant for a misdemeanor or felony committed in the officer's presence; searching property, cells, prisoners, or visitors; conducting strip or body cavity searches; conducting searches and seizures pursuant to a warrant; segregating prisoners; and classifying prisoners for the purpose of housing or participation in supervised activities.

P.C. 832.3
(Amended)
(Ch. 17) (AB 1888)
(Effective 1/1/2019)

Deletes the sunset date on this section, thereby continuing in effect the current version of P.C. 832.3, which provides that a deputy sheriff who has completed the regular basic course prescribed by the Commission on Peace Officer Standards and Training (POST) may be reassigned from a custodial assignment (e.g., jail duty) to a patrol or detective

continued

assignment within *three* years, **without** having to retake the basic POST course. Continues to provide that a deputy sheriff in a custodial assignment may be reassigned to patrol or a detective assignment within *five* years without having to retake the POST course, if he or she has remained continuously employed by the same department and has maintained the perishable skills training required by POST for the prevention and detection of crime and the general enforcement of criminal laws.

P.C. 832.7
P.C. 832.8
(Amended)
(Ch. 988) (SB 1421)
(Effective 1/1/2019)

Requires local and state agencies to make specified personnel records of peace officers and custodial officers, and specified records maintained by the agency, available for public inspection pursuant to the California Public Records Act, *notwithstanding* Gov't Code 6254(f) or any other law.

(Gov't Code 6254(f) provides that the California Public Records Act does *not* require disclosure of, among other things, records of complaints to, or investigations conducted by, state or local police agencies.)

The Types of Incidents for Which Records Must Be Made Available to the Public
Provides that the following peace officer or custodial officer personnel records and records maintained by a local or state agency are *not* confidential and "shall be made available for public inspection" pursuant to the California Public Records Act:

1. A record relating to the report, investigation, or findings of (a) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or (b) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.
2. A record relating to an incident in which a *sustained* finding was made that an officer engaged in sexual assault involving a member of the public. Defines "sexual assault" as the commission or attempted initiation of a sexual act with a member of the public by force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. Includes in the definition of sexual assault, "the propositioning for or commission of any sexual act while on duty." Defines "member of the public" as any person not employed

continued

by the officer's agency and any participant in a cadet, explorer, or other youth program affiliated with the agency.

3. A record relating to an incident in which a *sustained* finding was made of dishonesty by an officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including any sustained finding of perjury, false statements, filing false reports, or the destruction, falsifying, or concealing of evidence.

Types of Records That Must Be Released
Provides that the records that must be released relating to the above include all investigative reports; photographs; audio and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented to a district attorney for the determination of whether to file charges against an officer or presented to any person for the determination of whether the officer violated agency policy for the purposes of discipline or administrative action; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident.

Redaction
Requires redaction of the above records before disclosure. Requires the redaction of an officer's personal data (such as home address, telephone number, identities of family members), redaction to preserve the anonymity of complainants and witnesses, redaction to protect confidential medical or financial information, and redaction where there is "a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person." *Permits* redaction where the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure.

Delay of Disclosure

Criminal Investigations: Permits an agency to delay disclosure, during an active criminal investigation, of the records of an incident involving an officer discharging a firearm at a person or using force that results in death or great bodily injury. Permits delay for up to 60 days from the date the use of force occurred or until the district attorney

continued

determines whether to file charges, whichever occurs sooner. Requires the agency to state in writing the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. After 60 days, permits the agency to continue to delay disclosure if disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force or against someone other than the officer who used force. If disclosure is delayed during this period, the agency is required, at 180-day intervals, to provide in writing the specific basis why disclosure would interfere with the criminal enforcement proceeding. Requires disclosure by the 18-month mark at the outside, but if criminal charges are filed, disclosure may be delayed until there is a verdict at trial, or if there is a plea of guilty or no contest, until the time to withdraw the plea has passed pursuant to P.C. 1018 (which provides for the withdrawal of a plea before judgment or within six months after probation is granted).

Administrative Investigations: If there is an administrative investigation into a use of force incident, disclosure may be delayed until the agency determines whether the use of force violated a law or agency policy, but not longer than 180 days after the agency's discovery of the use of force, or 30 days after the close of any criminal investigation related to the use of force, whichever is later.

Frivolous or Unfounded Complaints
Prohibits the release of a civilian complaint, or the investigations, findings, or dispositions of that complaint, if the complaint is frivolous as defined in C.C.P. 128.5 (totally and completely without merit or for the sole purpose of harassing an opposing party) or if the complaint is unfounded as defined in amended P.C. 832.8 (see below).

Retroactivity
Does not specify that these new disclosure requirements apply only to incidents occurring on or after January 1, 2019. Agencies may be required to disclose records of investigations that occurred years ago.

Definitions of "Sustained" and "Unfounded"
Amends P.C. 832.8 to add definitions of "sustained" and "unfounded." "Sustained" means a final determination by an investigating agency, commission, board, hearing officer,

continued

or arbitrator, following an investigation and opportunity for administrative appeal, that the actions of the peace officer or custodial officer were found to violate law or department policy.

"Unfounded" means that an investigation clearly establishes that the allegation is not true.

Criminal Discovery Statutes and *Pitchess*
New subdivision (h) in P.C. 832.7 provides that nothing supersedes or affects the criminal discovery process in P.C. 1054–1054.10 or the admissibility of personnel records pursuant to existing P.C. 832.7(a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. (P.C. 832.7(a) provides that except as provided in the amendments made by this bill, peace officer and custodial officer records are confidential and shall not be disclosed except by discovery pursuant to Evidence C. 1043 and 1046.)

Long Beach Police Officers Association v. City of Long Beach
New subdivision (i) in P.C. 832.7 provides that nothing in Chapter 4.5 of Title 3 of Part 2 of the Penal Code (P.C. 830–832.25) is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59. (The Long Beach Police Officers Association sought an injunction to prevent the City of Long Beach from disclosing the names of officers involved in several shootings. The names were requested by the Los Angeles *Times*. The trial court denied injunctive relief, ruling that none of the disclosure exemptions in California's Public Records Act protected the officers' names. Injunctive relief was denied without prejudice to a renewed request demonstrating that releasing the names of particular officers would create a likelihood of harm. The appellate court and California Supreme Court agreed. The supreme court stated it was *not* holding that the names of officers in shootings have to be disclosed in every case, regardless of the circumstances. It concluded only that the particularized showing necessary to outweigh the public's interest in disclosure was not made in this case.)

Uncodifed Section Four and the California Constitution
Uncodified Section Four of this bill contains the Legislature's declaration that the amendment to P.C. 832.7 furthers the right of public access to the meetings of local bodies or the

continued

writings of local public officials and local agencies, within the meaning of Article I, section 3(b)(7) of the California Constitution (which requires local agencies to comply with the California Public Records Act and the Ralph M. Brown Open Meeting Act). Uncodified Section Four also contains the Legislature's finding that "The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society."

[Gov't Code 6254 is amended by AB 748 to expand public access to video and audio recordings in police use of force incidents. See the Government Code Section of this Digest for more information.]

P.C. 832.12
(New)
(Ch. 966) (AB 2327)
(Effective 1/1/2019)

Requires every department or agency in California that employs peace officers to "make a record of any investigations of misconduct involving a peace officer", in the peace officer's personnel file or in a separate file designated by the department or agency.

Requires a peace officer seeking employment with a department or agency that employs peace officers (e.g., a lateral hiring) to give written permission for the hiring department or agency to view the officer's personnel file and any separate designated file.

[Note that this new section is not limited to investigations of peace officer misconduct that result in a finding against the officer. It appears to apply to all misconduct investigations, even if the officer is exonerated.]

P.C. 851.91
(Amended)
(Ch. 653) (AB 2599)
(Effective 1/1/2019)

Requires a detention facility, at the request of an arrestee upon release, to supply to him or her the Judicial Council form for sealing the record of an arrest that did not result in a conviction. Also requires a detention facility to post a sign stating that a person who has been arrested but not convicted may petition the court to have the arrest and related records sealed and that the form may be requested at the facility or found on the Internet. (P.C. 851.91 details the circumstances and time frames for the sealing of an arrest that does not result in a conviction.)

P.C. 853.6
(Amended)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Expands the list of circumstances that permit a peace officer who arrests a person for a misdemeanor to *not* cite and release the person:

1. the person has one or more failures to appear in court on previous misdemeanor citations that have not been resolved; or
2. the person has been cited , arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous six months; or
3. there is probable cause to believe that the person is guilty of committing organized retail theft, in violation of new P.C. 490.4. (See P.C. 490.4, above, for more information about organized retail theft.)

Also adds the following to the existing circumstance of there being reason to believe that the person would not appear in court: "An arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice."

Provides that this version of P.C. 853.6 sunsets on January 1, 2021, at which time the pre-2019 language of P.C. 853.6 will again be in effect.

P.C. 859.7
(New)
(Ch. 977) (SB 923)
(Effective 1/1/2020)

Creates a statewide standard for eyewitness identification practices by requiring all law enforcement agencies and prosecutorial entities to adopt, by January 1, 2020, regulations for conducting photo lineups and live lineups with eyewitnesses and by specifying the minimum standards for those regulations. Specifically provides that this new section does *not* affect policies for field show up procedures.

Minimum Requirements
The following are the minimum requirements for eyewitness identifications:

1. Eyewitnesses must provide a description of the perpetrator as close in time to the incident as possible, and before any identification (ID) procedure is conducted.
2. The investigator conducting the ID procedure must use "blind administration" or "blinded administration" during the ID procedure.

continued

3. If blind administration is not used, the investigator must state in writing the reason it was not used.
4. Eyewitnesses must be instructed as follows before any ID procedure: (a) The perpetrator may or may not be among the persons shown; (b) the eyewitness should not feel compelled to make an ID; and (c) an ID or the failure to make an ID will not end the investigation.
5. The filler people or photos for an ID procedure must generally fit the eyewitness description. In the case of a photo lineup, the photo of the actual suspect should resemble his or her appearance at the time of the offense and "not unduly stand out."
6. In a photo lineup, information about any previous arrest of the suspected person cannot be visible to the eyewitness.
7. Only one suspected perpetrator can be included in any ID procedure.
8. All eyewitnesses must be separated when viewing an ID procedure.
9. Nothing shall be said to an eyewitness that might influence an ID by the witness.
10. If the eyewitness makes an ID, all of the following are required: (a) the investigator must inquire about the witness' level of confidence in the accuracy of the ID and "record in writing, verbatim, what the eyewitness says"; (b) information about the identified person cannot be given to the eyewitnesses before obtaining the witness' statement about his or her confidence level; and (c) the officer is prohibited from validating or invalidating any ID made.
11. An electronic recording must be made (both audio and video) of an ID procedure, if feasible. If not feasible an audio-only recording may be made and the investigator must state in writing the reason that video recording was not feasible.

Definitions
Provides that "blind administration" means that the administrator of an eyewitness ID procedure does not know the identity of the suspect.

Provides that "blinded administration" means that the administrator of the ID procedure may know who the suspect is, but does not know where the suspect in a live lineup or the suspect's photo in a photo lineup, has been placed or positioned in the ID procedure through the use of:

continued

(a) an automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the ID procedure is completed; (b) the folder shuffle method for conducting a photo lineup, whereby photos are placed in folders, then randomly numbered, then shuffled, then presented sequentially so that the administrator cannot see or track which photo is being presented to the eyewitness until after the procedure is completed; or (c) any other procedure that achieves neutral administration and prevents the lineup administrator from knowing where the suspect, or his or her photo, has been placed or positioned in a live lineup or in a photo lineup.

Defines "eyewitness" as a person whose identification of another person may be relevant in a criminal investigation.

Relevant Evidence Is Still Admissible
Provides that nothing in this new section is "intended to preclude the admissibility of any relevant evidence or to affect the standards governing the admissibility of evidence under the U.S. Constitution." Note that there is no authority in this section for a court to suppress an identification based solely on the failure to follow these minimum regulations. And, even if the statute contained a suppression mechanism, it would not be effective, because the bill did not receive a 2/3 vote in either the Assembly or the Senate. The Assembly vote was 50 for, 21 against, and 9 not voting. The Senate vote was 21 for, 8 against, and 11 not voting. A 2/3 vote in the Assembly requires 54 votes and a 2/3 vote in the Senate requires 27.

California Constitution art. I, section 28(f)(2) ("Right to "Truth-in-Evidence," a part of 1982's Proposition 8) provides that relevant evidence shall **not** be excluded in any criminal proceeding or in any trial or hearing of a juvenile for a criminal offense, except where two-thirds of the members of both houses of the Legislature enact a statute to provide for exclusion. In *In re Lance W.* (1985) 37 Cal.3d 873, the California Supreme Court interpreted this part of Prop 8 and held that evidence cannot be excluded based on a violation of California law where it is admissible under federal law.

[Uncodified Section One of this bill sets forth the Legislature's findings and declarations that eyewitness misidentification is the leading contributor to wrongful convictions and in California, eyewitness misidentification played a role in 12 out of 13 DNA-based exonerations.]

P.C. 978.5
(Amended)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Adds the following to the list of situations permitting a bench warrant of arrest to issue when a defendant fails to appear in court: The defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges in the previous six months.

Provides that this version of P.C. 978.5 sunsets on January 1, 2021, at which time the pre-2019 language of P.C. 978.5 will again be in effect.

P.C. 1000.7
(Amended)
(Ch. 1007) (SB 1106)
(Effective 1/1/2019)

Adds Ventura County to the list of counties (Alameda, Butte, Napa, Nevada, and Santa Clara) that are authorized to operate a deferred entry of judgment pilot program for young adults (ages 18, 19, or 20 at the time the crime is committed). Extends, from January 1, 2020 to January 1, 2022, the sunset date on this program.

[This pilot program permits a young adult to plead guilty to a felony and enter a program within the county's juvenile hall that provides behavioral, mental health, educational, vocational, and supervision services. Excludes defendants who have a prior or current conviction for a serious felony (P.C. 1192.7(c)), violent felony (P.C. 667.5(c)), W&I 707(b) offense, or offense requiring registration as a sex offender (P.C. 290).]

P.C. 1001.35
P.C. 1001.36
(New)
(Ch. 34) (AB 1810)
(Effective 6/27/2018)

and

P.C. 1001.36
(Amended)
(Ch. 1005) (SB 215)
(Effective 1/1/2019)

Creates new Chapter 2.8A in Title 6 of Part 2 of the Penal Code entitled "Diversion of Individuals with Mental Disorders."

Overview
Permits a court to grant pre-trial diversion in a misdemeanor or felony case if:

1. the court is satisfied that the defendant suffers from a specified mental disorder (requires this evidence to be provided by the defense and requires that it include a recent diagnosis by a qualified mental health expert);
2. the court is satisfied that the mental disorder was a significant factor in the commission of the charged offense (permits the court to review any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, statements by

continued

the defendant's mental health treatment provider, and medical records);
3. a qualified mental health expert opines that the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to treatment;
4. the defendant consents to diversion and waives his or her right to a speedy trial;
5. the defendant agrees to comply with treatment; and
6. the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in existing P.C. 1170.78, if treated in the community. (Permits the court to consider the opinions of the district attorney, the defense, or a qualified mental health expert; the defendant's violence and criminal history; the current charged offense; and any other factors the court deems appropriate. P.C. 1170.18 defines "unreasonable risk of danger to public safety" as meaning an unreasonable risk that the defendant will commit a new felony specified in P.C. 667(e)(2)(C)(iv) (commonly referred to as "superstrikes").)

Type of Mental Disorder
Requires that the mental disorder be 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.

Excludes from this diversion program defendants who have any of these three mental disorders: antisocial personality disorder, borderline personality disorder, and pedophilia.

Mental Disorder Diversion Is Not Mandatory
This new chapter does *not* require a county to set up a pre-trial diversion program for defendants with mental disorders and does not prohibit a county from creating a more restrictive mental disorder diversion program.
P.C. 1001.35 specifies that one of the purposes of this new chapter is to allow local discretion and flexibility for counties in the development and implementation of diversion. And even if a county has a mental disorder diversion program, a judge is *not* required to place an eligible defendant into the program. P.C. 1001.36(a) provides that after considering the positions of the defense and prosecution, a court *may* grant pre-trial diversion if the defendant meets the specified

continued

requirements. And P.C. 1001.36(h) uses this language: "…when determining whether to exercise *its discretion to grant diversion* under this section, a court may consider previous records of participation in diversion under this section."

Disqualifiers
When first effective on June 27, 2018, there were no disqualifiers specified for this mental disorder diversion program except for defendants who have antisocial personality disorder, borderline personality disorder, or pedophilia. SB 215 was signed into law by the Governor on September 30, 2018, and will be effective on January 1, 2019. It provides that a defendant may not be placed into a diversion program pursuant to this section for the following currently charged offenses:

1. Murder
2. Voluntary manslaughter
3. An offense, conviction of which would require P.C. 290 sex offender registration, except P.C. 314 (indecent exposure)
4. Rape
5. Lewd or lascivious act on a child under age 14
6. Assault with intent to commit rape, sodomy, or oral copulation in violation of P.C. 220
7. Rape or sexual penetration in concert in violation of P.C. 264.1
8. Continuous sexual abuse of a child in violation of P.C. 288.5
9. A violation of P.C. 11418(b) or (c) (using or employing a weapon of mass destruction)

Prima Facie Showing
The SB 215 amendments (effective January 1, 2019) also permit the court, at any stage of the proceedings, to require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. Provides that the hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. Provides that if a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

continued

Treatment and Maximum Period of Diversion
Permits a defendant to be referred to inpatient or outpatient mental health treatment programs and limits the diversion program to two years.

Restitution
The SB 215 amendments (effective January 1, 2019) provide that upon request, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and if it is, order its payment during the period of diversion. However, a defendant's inability to pay restitution because of indigence or mental disorder cannot be grounds for the denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

Diversion Failure and Modification of Diversion
Authorizes the court to hold a hearing during the period of diversion to determine whether criminal proceedings should be reinstated, or whether treatment should be modified, or whether a conservatorship investigation should be initiated, if any of these circumstances exist:

1. the defendant is charged with a misdemeanor crime committed during pre-trial diversion and the crime reflects the defendant's propensity for violence;
2. the defendant is charged with a felony committed during pre-trial diversion;
3. the defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or
4. based on the opinion of a qualified mental health expert, the defendant is either performing unsatisfactorily in the program, or, is gravely disabled and should be conserved.

Successful Completion of Diversion
Provides that if a defendant performs satisfactorily in diversion, the court must dismiss the criminal charges at the end of the diversion period. A generous definition that is very favorable to defendants is provided. P.C. 1001.36(e) permits a court to conclude that a defendant has performed satisfactorily if the defendant substantially complied with the requirements of diversion, avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan for long-term mental health care.

continued

Recent Case Law
In *People v. Frahs* (2018) 27 Cal.App.5th 784 9 (not final as of 12/5/2018), the court found that pre-trial diversion pursuant to P.C. 1001.36 is an ameliorating benefit and that therefore it should be applied retroactively to cases not yet final on appeal. The court conditionally reversed the defendant's convictions and remanded the case for a mental health diversion eligibility hearing pursuant to P.C. 1001.36. In two places in the opinion, the appellate court is clear that even if the defendant is eligible for diversion the trial court is not required to grant diversion. The court states that if the trial court finds that the defendant suffers from a mental disorder, does not pose an unreasonable risk of danger to public safety and otherwise meets the other statutory criteria, "then the court may grant diversion." In the disposition section of the opinion, the court states: "If the trial court determines that Frahs qualifies for diversion under section 1001.36, then the court may grant diversion."

Miscellaneous
P.C. 1001.36 does not provide any limitation on how many times a defendant could be diverted and says nothing about making divertees ineligible to own, possess, or control firearms or ammunition.

[This bill also amends P.C. 1370 and 1370.01 to permit a court to grant pre-trial mental disorder diversion pursuant to P.C. 1001.36 to defendants who are found incompetent to stand trial. See below. This bill also creates new W&I 4361 to help fund pre-trial mental disorder diversion for defendants who are incompetent to stand trial. See the Welfare and Institutions Code Section of this Digest for more information.]

P.C. 1001.81
P.C. 1001.82
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Creates new Chapter 2.9D in Title 6 of Part 2 of the Penal Code entitled "Repeat Theft Crimes Diversion or Deferred Entry of Judgment Program."

Authorizes a county prosecuting attorney, a city prosecuting attorney, or a county probation department to create a diversion **or** deferred entry of judgment program for persons who commit repeat theft offenses. Permits the program to be conducted by either a prosecuting attorney's office or a county probation department.

continued

Does not include any program disqualifiers and leaves the details about exactly what the program will look like to each individual county or city.

Permits a prosecuting attorney to enter into a written agreement with an offender to refrain from, or defer, prosecution on the following conditions:

1. completion of program requirements such as community service or courses reasonably required by the prosecuting attorney; and
2. making "adequate restitution or an appropriate substitution for restitution" to the establishment or person from which the property was stolen "at face value of the stolen property," if required by the program.

Defines "repeat theft offenses" as being cited or convicted for misdemeanor or felony theft from a store or from a vehicle, two or more times in the previous 12 months, and failing to appear in court or continuing to commit these crimes after release or after conviction.

Provides that this new chapter will sunset on January 1, 2021.

P.C. 1054.9
(Amended)
(Ch. 482) (AB 1987)
(Effective 1/1/2019)

Expands post-conviction discovery provisions to cases involving the conviction of a serious (P.C. 1192.7(c)) or violent (P.C. 667.5(c)) felony resulting in a sentence of 15 years or more. (Previously, P.C. 1054.9 applied only to cases involving a sentence of death or life without the possibility of parole (LWOP).) Thus, any defendant convicted of a serious or violent felony and sentenced to at least 15 years (determinate term or life term), may seek post-conviction discovery materials in the possession of the prosecution or law enforcement after showing that good faith efforts were made to obtain discovery materials from trial counsel and that those efforts were not successful.

Provides that in a case other than death or LWOP, if a court has already granted discovery pursuant to this section, a subsequent discovery order "may be made in the court's discretion." Requires that a request for discovery in a non-death/non-LWOP case include a statement by the defendant as to whether discovery has previously been granted pursuant to this section.

continued

Requires trial counsel in a criminal case involving a conviction of a serious or violent felony resulting in a sentence of 15 years or more, to retain a copy of a former client's files for the term of the client's imprisonment. Provides that an electronic copy is sufficient only if every item in the file is digitally copied and preserved.

Provides that the amendments made by this bill are intended to apply prospectively only.

[Uncodified Section Three of this bill requests the State Bar to study the issue of closed-client file release and retention by defense attorneys and prosecutors in criminal cases by ascertaining whether release and retention duties are clear in light of the Rules of Professional Conduct that became operative on November 1, 2018, by considering the issuance of an advisory ethics opinion if file release and retention duties are not sufficiently apparent in the context of post-conviction discovery, and by considering the adoption of a new or amended Rule of Professional Conduct if it finds that file release and retention duties in the new rules are deficient in protecting clients and the public in the context of post-conviction discovery.]

P.C. 1170
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

and

(Ch. 1001) (AB 2942)
(Effective 1/1/2019)

Sentence Recall at the Request of a District Attorney
Beginning January 1, 2019, amends P.C 1170(d)(1) to expand sentence recall provisions by permitting the court to recall a state prison sentence or a P.C. 1170(h) jail sentence and re-sentence a defendant, at any time upon the recommendation of the *district attorney* of the county in which a defendant was sentenced. Continues to permit the court to recall a sentence on its own motion within 120 days of the defendant being sentenced and continues to permit the court to recall a sentence at any time upon the recommendation of the Secretary of CDCR, the Board of Parole Hearings, or the county correctional administrator. Continues to provide that the new sentence, if any, cannot be greater than the initial sentence.

A Court's Authority to Reduce a Sentence and Modify a Judgment, Even if a Plea Agreement Is Involved
Beginning June 27, 2018, adds that for any re-sentencing pursuant to P.C. 1170(d)(1), the court may reduce a defendant's term of imprisonment and modify the judgment, in the interest of justice, *even if judgment was imposed pursuant*

continued

to a plea agreement. Sets forth post-conviction factors that a court may consider, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. (Note that the language used is slanted toward sentences being reduced.)

Applies to Both Determinate and Indeterminate Terms
Note that existing language in P.C. 1170(d)(1) makes it applicable to both determinate term sentences (P.C. 1170) and indeterminate sentences (P.C. 1168(b)), in that it provides "[w]hen a defendant subject to this section or subdivision (b) of Section 1168 …."

Notes
Note that the amendments do not appear to limit the re-sentencing court to the sentence recommended by a district attorney who requests that the sentence be recalled. Note also that there are no provisions in P.C. 1170(d)(1) authorizing a court to recall a sentence at the request of a defendant. But defendants will almost certainly inundate district attorney offices asking prosecutors to request recall.

Crime Victims
Crime victims should have a right to be present and to be heard at any re-sentencing hearing pursuant to P.C. 1170(d) (no matter who initiated sentence recall), and should have the right to have their safety considered before any release decision is made.

Article I, section 28(b)(7) of the California Constitution provides that victims have the right "[t]o reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings."

Article I, section 28(b)(8) provides the right "[t]o be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision,

continued

plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue."

Article I, section 28(b)(16) provides the right "[t]o have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made."

It is possible that a crime victim could challenge a P.C. 1170(d)(1) re-sentencing (no matter how it is initiated) based on constitutional provisions such as article I, section 28(a)(6) of the California Constitution, which declares that "Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end."

A Few Issues to Consider
Some issues to consider that are beyond the scope of this publication:

1. May a plea agreement be entered into whereby the prosecution agrees to request that a defendant's sentence be recalled at a particular time in the future, or if the defendant behaves well in prison for a specified period of time, or when a variety of other conditions are met?
2. May a plea agreement be entered into whereby a defendant agrees to waive future re-sentencing under P.C. 1170(d)(1)? Would such a plea agreement prohibit a court from recalling the sentence on its own motion or at the request of a third party, or prohibit a newly elected district attorney from requesting recall of such a plea agreement entered into by a predecessor?
3. Does the court's new authority in P.C. 1170(d)(1) to "modify the judgement" mean that the court can use P.C. 1385 to actually dismiss enhancements and/or charges instead of simply lowering the sentence for a particular crime?

P.C. 1170.91
(Amended)
(Ch. 523) (AB 865)
(Effective 1/1/2019)

Creates a procedure for military veterans currently serving a sentence for a felony conviction, to petition for re-sentencing if they were sentenced *before* January 1, 2015, which was the date that P.C. 1170.91 became effective. Since January 1, 2015, P.C. 1170.91(a) has required a court to consider as a mitigating sentencing factor, suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service. New subdivision (b) in P.C. 1170.91 permits a veteran currently serving a sentence for a felony conviction (whether convicted by plea or at trial) who may be suffering from any of the trauma described above, to petition for recall of sentence and re-sentencing if the trauma was *not* considered as a factor in mitigation at the time of sentencing *and* if the defendant was sentenced before January 1, 2015.

Requires the original judge who sentenced the defendant to hear the petition for recall/re-sentencing, if available. Requires at least 15 days' notice to the prosecution, the defense, and the victim before a hearing is held. Requires that the prosecution have an opportunity to be heard about the defendant's eligibility and suitability for re-sentencing. Provides that CDCR does not have an obligation to provide medical or mental health assessments in order to identify potential service-related injuries.

[It appears that P.C. 1170.91 should apply only to determinate (as opposed to life) sentences, because subdivision (a) specifically provides that military trauma shall be considered a mitigating factor "when imposing a term under subdivision (b) of Section 1170." P.C. 1170(b) provides that when a statute specifies three possible terms for a crime, the choice of the appropriate term rests within the sound discretion of the court. It also discusses the filing of statements in aggravation or mitigation by the parties or victims.]

[*Note*: The burden of proof should be on the defendant by a preponderance of the evidence to show that he or she is eligible and suitable for recall and re-sentencing. (See *People v. Romanowski* (2017) 2 Cal.5th 903, holding that a defendant has the burden of proving eligibility for relief under Proposition 47 (P.C. 1170.18). See also Evidence C. 500, which provides that a party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief, and Evidence C. 115, which

continued

provides that except as otherwise provided, a burden of proof is by a preponderance of the evidence.) At a minimum, a defendant should be required to produce and attach to his or her petition, the sentencing transcript in the case and any sentencing report written by the Probation Department, because a prerequisite for relief is that trauma was *not* considered as a factor in mitigation at sentencing. There may be a number of cases where the sentencing judge did consider trauma when weighing mitigating and aggravating factors, even before January 1, 2015, because such information may have been presented by a defense attorney or discussed in a sentencing report.]

[Existing P.C. 1170.9 continues to provide that when a court finds that a veteran committed an offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. military, and places the defendant on probation, the court may order the defendant into a treatment program for a period of time not to exceed the time the defendant would have served in state prison or county jail.]

P.C. 1170.95
(New)
(Ch. 1015) (SB 1437)
(Effective 1/1/2019)

Creates a procedure for a person convicted of murder on a felony murder theory or a natural and probable consequences theory, to file a petition to have the conviction vacated and to be re-sentenced. Applies to murder convictions of any age, and regardless of whether the defendant is in or out of custody or has completed the sentence. There is no specified deadline for filing such a petition.

[This bill amends P.C. 188 and 189 to provide that a participant in the perpetration or attempted perpetration of a felony specified in P.C. 189 in which a death occurs, is liable for murder only if one of the following is proven:

1. the person was the actual killer;
2. the person was not the actual killer, but with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree; or
3. the person was a major participant in the underlying felony and acted with reckless indifference to human life.

See above for more on P.C. 188 and 189.]

continued

Permits a petition to be filed to vacate a murder conviction and to be re-sentenced if:

1. the charging document allowed the prosecution to proceed under a theory of felony murder or natural and probable consequences;
2. the petitioner was convicted of first degree murder or second degree murder following a trial *or a plea;* and
3. the petitioner could not be convicted of first or second degree murder because of the changes to P.C. 188 and 189 effective January 1, 2019.

Requires that the petition contain a declaration by the petitioner that he or she is eligible for relief, the superior court case number and year of the conviction, and whether the petitioner requests the appointment of counsel. Does not specify how detailed the petitioner's declaration must be. The prosecution must file its response within 60 days of being served with the petition and the petitioner may file a reply within 30 days. Provides that if the petitioner makes a prima facie showing, the court shall issue an order to show cause.

Requires the court to hold a hearing within 60 days of issuing the order to show cause, but permits the court to grant a continuance for good cause. *Places the burden on the prosecution to prove beyond a reasonable doubt that the defendant is not eligible for resentencing*. Permits the prosecution and the defense to rely on the record of conviction or to offer "new or additional evidence." (Does not specify any limitations for the new or additional evidence, and does not prohibit live testimony.)

Provides that if the prosecution does not carry its burden, the murder conviction, and any allegations or enhancements attached to it, must be vacated and the defendant sentenced on the remaining charges. Provides that any new sentence cannot be greater than the initial sentence. Provides that if murder was charged generically and the target offense was not charged, the petitioner's conviction shall be re-designated as the target offense or underlying felony. Provides that any applicable statute of limitations is not a bar to the court re-designating an offense.

continued

Permits the parties to waive a re-sentencing hearing and to stipulate that the murder conviction be vacated and the defendant re-sentenced.

Authorizes a judge to order the petitioner to be subject to parole supervision for up to three years following completion of the sentence.

P.C. 1202.4
(Amended)
(Ch. 142) (AB 2226)
(Effective 1/1/2019)

Amends P.C. 1202.4(f)(3)(J) to add P.C. 273.5 (domestic violence) to the list of crimes (P.C. 667.5(c) violent felonies) for which the court must order a convicted defendant to pay restitution to reimburse a victim for expenses to install or increase residential security, including a home security device or system, or replacing or increasing the number of locks. Note that the language a "violation of Section 273.5" is added and *not* language such as "a felony violation of Section 273.5." Thus, a misdemeanor *or* felony conviction of P.C. 273.5 mandates that the court order restitution for a victim's security expenses. Note also that existing language in P.C. 1202.4(f)(3) requires that a restitution order be made for the losses specified in subparagraphs (A) through (L), by providing that the restitution order "*shall* be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's conduct, including, but not limited to, *all* of the following: …."

Recent case law addresses this issue and the California Supreme Court has granted review in at least three cases. *People v. Salas* (2017) 9 Cal.App.5th 736 held that a defendant convicted of P.C. 273.5 and sentenced to state prison could not be ordered to pay restitution for a victim's security expenses because P.C. 273.5 is not one of the violent felonies specified in P.C. 667.5(c).

People v. Henderson (2018) 20 Cal.App.5th 467 (review granted 5/23/2018) (S247716) disagreed with *Salas* and held that a defendant convicted of a non-P.C. 667.5(c) offense and sentenced to state prison was properly ordered to pay restitution for a victim's residential security expenses. The *Henderson* court found that a court is required to order restitution for security expenses if the defendant is convicted of a crime specified in P.C. 1202.4(f)(3)(J), and has the discretion to order such expenses in any other case. *Henderson* points to the "including, but not limited to"

continued

language in P.C. 1202.4(f)(3). (Defendant Henderson was convicted of stalking (P.C. 646.9), vandalism (P.C. 594), and violating a restraining order (P.C. 273.6), and was sentenced to state prison.)

Besides *Henderson,* the California Supreme Court has granted review in at least two other cases on this issue:

1. *People v. Brooks* (2018) 23 Cal.App.5th 932 (review granted 8/29/2018, (S249617) agreed with *Henderson,* holding that the court had the discretion to order a defendant convicted of first degree burglary and sentenced to state prison to pay restitution for the victim's residential security expenses.
2. *People v. Calavano* (review granted 8/9/2017) (S242474). *Calavano* is the lead case. Defendant Calavano was sentenced to state prison for a violation of P.C. 245(a)(4) (assault by means of force likely to produce great bodily injury, a non-P.C. 667.5(c) crime) and was ordered to pay restitution for the installation of a security system in the victim's home.

Keep in mind that all of the above cases involved a defendant sentenced to state prison. The court's authority to order restitution as a condition of probation is even more broad than its authority pursuant to P.C. 1202.4. In the California Supreme Court case of *People v. Martinez* (2017) 2 Cal.5th 1093, the court makes a distinction between restitution ordered pursuant to P.C. 1202.4 and restitution ordered as a condition of probation. *Martinez* says that a trial court's "power to order restitution in probation cases is thus broader than its power to order direct victim restitution under section 1202.4 in cases in which the defendant receives a non-probationary sentence." (*Martinez, supra*, at 1101.) *Martinez* refers to a 1995 California Supreme Court hit-and-run case, *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120–1121, which provides that in granting probation, "courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety….*this discretion has long been held to include the power to order restitution even when the loss was not necessarily caused by the criminal conduct underlying the conviction ….*" (Emphasis added.) Thus, no matter what happens with the state prison cases currently on review with the California Supreme Court, a trial court has the discretion to order a defendant to pay restitution for a victim's residential security expenses in any appropriate case, when granting probation.

P.C. 1203.099
(New)
(Ch. 290) (AB 372)
(Effective 7/1/2019)

Authorizes the counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer a domestic violence program that does *not* comply with the requirements of a batterer's program in existing P.C. 1203.097 and 1203.098. According to the legislative history of this bill, the concern is the high rate of recidivism among domestic violence offenders and the desire for a domestic violence program that is tailored to the individual needs of each offender rather than a one-size-fits-all approach.

[Existing P.C. 1203.097 specifies a minimum probation period of 36 months, a minimum $500 batterer's fee, a protective order for the victim, and successful completion of a minimum one-year batterer's program. Existing P.C. 1203.098 specifies the training requirements for a facilitator of a batterer's intervention program.]

New P.C. 1203.099 requires the following:

1. the development of a domestic violence program in consultation with domestic violence service providers and other relevant community partners;
2. a risk and needs assessment for each offender entering the program with the offender's treatment being based on the findings of the assessment;
3. program components that are "evidence-based or promising practices";
4. a comprehensive written curriculum;
5. a treatment program of at least one year in length, unless an alternative length is established by a validated risk and needs assessment completed by the probation department or an organization approved by the probation department;
6. collection of data (e.g., offender demographic information, criminal history, risk level, treatment provided, and treatment outcome); and
7. reporting of data to the Legislature (e.g., the risk and needs assessment tool used for the program, the curriculum used, the offender data collected, the number of participants with a program length of other than one year).

Defines "evidence-based program or practice" as a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and

continued

evaluations that incorporate strong comparison group designs, or a large multi-site randomized study, and typically, has specified procedures that allow for successful replication.

Defines "promising program or practice" as a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation.

P.C. 1209.5
(Amended)
(Ch. 280) (AB 2532)
(Effective 1/1/2019)

Now requires, instead of simply permits, the court to allow a defendant convicted of an infraction to perform community service instead of paying a fine (including assessments and penalties), if the defendant shows that payment of the total fine would pose a hardship on the defendant or on his or her family. Provides that the hourly rate applicable to community service is double the minimum wage set forth in Labor Code 1182.12 for an employer who employs 25 or fewer employees. For example, for 2019, an employer employing 25 or fewer employees must pay at least $11 per hour. Therefore, the hourly rate assigned to community service performed in 2019 in lieu of paying an infraction fine would be $22. A defendant working off a total fine of $110 would have to perform five community service hours.

Authorizes the court, "by local rule," to increase the hourly rate credited for each hour of community service, above that provided for in Labor Code 1182.12. [Amended P.C. 1209.5 creates a minimum rate that is assigned to community service hours—double the minimum wage—but does not create a maximum hourly rate that a court may assign for each hour of community service work performed.]

P.C. 1210.6
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Provides that upon appropriation by the Legislature, the Board of State and Community Corrections shall award grants to four or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers. Requires the demonstration projects to use risk assessments at sentencing when a misdemeanor conviction results in a term of probation, in order to identify high-risk misdemeanants and to place them on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral

continued

or treatment needs to achieve rehabilitation and successful completion of probation. Requires the projects to evaluate probation completion and recidivism rates for project participants, and authorizes these rates to be compared to control groups.

Provides that this new section will sunset on January 1, 2021.

P.C. 1320.6
(New)
(Ch. 244) (SB 10)
(Most likely not effective on **10**/1/2019, as SB 10 provides. See P.C. 1320.7–1320.34 for more information.)

Repeals existing Chapter One of Title 10 of Part 2 of the Penal Code entitled "Bail," which contains provisions regarding bail, bail bonds, non-bailable offenses, bail fugitive recovery persons, forfeiture of bail, and the crimes of willful failure to appear after own recognizance release (P.C. 1320) and willful failure to appear after release on bail (P.C. 1320.5). See P.C. 1320.7–1320.34 below, for pre-trial release provisions effective on October 1, 2019, unless a referendum to overturn SB 10 qualifies for the November 2020 ballot.

P.C. 1320.7
P.C. 1320.8
P.C. 1320.9
P.C. 1320.10
P.C. 1320.11
P.C. 1320.13
P.C. 1320.14
P.C. 1320.15
P.C. 1320.16
P.C. 1320.17
P.C. 1320.18
P.C. 1320.19
P.C. 1320.20
P.C. 1320.21
P.C. 1320.22
P.C. 1320.23
P.C. 1320.24
P.C. 1320.25
P.C. 1320.26
P.C. 1320.27
P.C. 1320.28
P.C. 1320.29
P.C. 1320.30
P.C. 1320.31
P.C. 1320.32
P.C. 1320.33
P.C. 1320.34
(New)
(Ch. 244) (SB 10)
(Effective **10**/1/2019)

and

(Ch. 980) (SB 1054)
(further amending
P.C. 1320.10 and 1320.26)

***NOTE*: A referendum to overturn SB 10 will most likely qualify for the November 2020 ballot and thereby prevent these new provisions from going into effect on 10/1/2019.** **See page 160 for more information.**

Creates new Chapter 1.5 in Title 10 of Part 2 of the Penal Code entitled "Pretrial Custody Status."

Overview
Eliminates money bail and replaces it with a risk-based assessment system whereby a validated risk assessment tool is used to evaluate whether an arrestee is a low, medium, or high risk for failing to appear in court or is a low, medium, or high risk to commit a new crime while released on the current offense. P.C. 1320.7 defines low risk as a minimal level of risk, medium risk as a moderate level of risk, and high risk as a significant level of risk. Provides for release upon arrest, within a few hours after arrest, before arraignment, or at arraignment, depending on the crime the person is arrested for, and the arrestee's level of risk and criminal history.

A number of provisions that will determine exactly how this risk-based system will work will become known as the Judicial Council and the courts adopt statewide and local Rules of Court. Among other things, a list of approved pre-trial risk assessment tools must be developed, and the types of release conditions that may be imposed on released defendants must be established.

Pre-trial Assessment Services: P.C. 1320.7(g) and 1320.26
Requires a court to establish Pre-trial Assessment Services (PAS) to assess the risk level of arrestees, to report the results of the risk determination to the court, and to make recommendations for conditions of release. Requires that these services be performed by public employees. Permits these services to be performed by court employees, or the court may contract with a local public agency with relevant experience. Prohibits the court from contracting with a local public agency that has primary responsibility for making arrests and detentions. Specifically permits Santa Clara County to contract with its existing Office of Pre-trial Services. Specifically permits San Francisco County, until January 1, 2023, to contract with an existing non-profit entity that is already performing pre-trial services in that county. Requires each county, by February 1, 2019, to submit to the Judicial Council a letter confirming its intent to contract for pre-trial assessment services.

Permits a court to contract for services from an adjoining county or with an entity that provides services as part of

continued

a regional consortium. Provides that PAS does **not** include the supervision of released arrestees. (P.C. 1320.28 provides for funding to probation departments to handle pre-trial supervision services.)

Most Misdemeanor Arrestees Are to Be Booked and Released, Not Detained. No Risk Assessment Will Be Done: P.C. 1320.8
With some specified exceptions listed in P.C. 1320.10(e), misdemeanor arrestees (arrested with or without a warrant) will be booked and released without being taken into custody, or, if taken into custody, must be released without a risk assessment within 12 hours of booking.

Investigation for Detained Persons: P.C. 1320.9 and 1320.7(k)
Requires Pre-trial Assessment Services (PAS) to obtain specified information for each detained person, prepare a report, and make recommendations for release. The specified information to be obtained is:

1. The results of a risk assessment using a validated risk assessment instrument. (The risk assessment instrument is to be selected by a court from a list of approved pre-trial risk assessment tools maintained by the Judicial Council. Acceptable risk assessment tools must be demonstrated by scientific research to be accurate and reliable in assessing the risk of a person for failing to appear in court or the risk to public safety for committing a new crime if released, and require the risk assessment tool to "minimize bias.")
2. The criminal charge for which the person was arrested, his or her criminal history, and the history of failing to appear in court within the past three years.
3. Any supplemental information "reasonably available that addresses the arrested person's risk to public safety or risk of failure to appear in court."

Requires the district attorney "to make a reasonable effort to contact the victim for comment on the person's custody status."

Requires that options for release are to be established by the Judicial Council and set forth in the California Rules of Court.

continued

Release by Pre-trial Assessment Services: P.C. 1320.10 and 1320.11
Requires PAS, in conducting a pre-arraignment review, to consider any relevant and available information from law enforcement, the arrested person, any victim, the prosecution, and the defense.

Low Risk: If an arrestee is classified as low risk, he or she must be released on his or her own recognizance, before arraignment and without review by the court, and with the least restrictive non-monetary condition or combination of conditions that will reasonably assure public safety and the person's return to court.

Medium Risk: An arrestee classified as medium risk shall be released on his or her own recognizance or on supervised own recognizance release, before arraignment and without review by the court, and with the least restrictive non-monetary condition or combination of conditions that will reasonably assure public safety and the person's return to court.

Requires low risk and medium risk arrestees to be released within 24 hours of booking, which may be extended up to 36 hours if there is good cause. Requires an arrestee released on his or her own recognizance to sign a release agreement that includes a promise to appear as ordered by the court, a promise not to leave California without the permission of the court, an agreement to waive extradition if the person fails to appear and is apprehended out of state, an acknowledgment that he or she has been informed of the consequences and penalties for violating release conditions, and an agreement to obey all laws and orders of the court. Requires a superior court, in consultation with PAS and other stakeholders to adopt a local rule of court consistent with the California Rules of Court adopted by the Judicial Council that sets forth review and release standards for arrestees classified as medium risk. Requires the local rule to provide for the release or detention of medium-risk defendants that protects public safety and respects the due process rights of defendants. Permits the local rule to expand the list of offenses and factors for which pre-arraignment release for medium-risk arrestees is not permitted.

continued

Prohibits a person from being required to pay for any non-monetary release condition imposed.

Prohibits PAS from releasing a person:

1. Classified as high risk.
2. Arrested for an offense listed in P.C. 290 (sex offenses).
3. Arrested for a misdemeanor violation of P.C. 273.5 (domestic violence involving a corporal injury); 243(e)(1) (domestic violence battery); 646.9 (stalking); or 273.6 (restraining order violation) if the 273.6 involved violence, or threats to kill or harm, or if the arrestee went to the residence or workplace of the protected party.
4. Arrested for a felony offense that includes, as an element of the crime, physical violence to another person, the threat of physical violence, or the likelihood of great bodily injury, or, a felony offense in which the arrestee is alleged to have personally inflicted great bodily injury or is alleged to have been personally armed with or personally used a deadly weapon or firearm.
5. Arrested for a third offense within the past 10 years of driving under the influence of alcohol or drugs or a combination of alcohol and drugs, or an offense of driving under the influence of alcohol or drugs causing injury to another person, or an offense of driving under the influence with a blood alcohol level of .20 or higher.
6. Arrested for a violation of any type of restraining order within the past five years.
7. Who has three or more prior warrants for failing to appear within the previous 12 months.
8. Who at the time of arrest is pending trial or pending sentencing for a misdemeanor or a felony.
9. Who at the time of arrest is on any form of post-conviction supervision other than informal probation or court supervision (this would apply to arrestees on formal probation, parole, mandatory supervision, post-release community supervision).
10. Who has intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime.
11. Who has violated a condition of pre-trial release within the past five years.
12. Who has been convicted of a serious felony (P.C. 1192.7(c)) or a violent felony (P.C. 667.5(c)) within the past five years.
13. Arrested with or without a warrant for a serious felony (P.C. 1192.7(c)) or a violent felony (P.C. 667.5(c)).

continued

Pre-arraignment Reviews by the Court: P.C. 1320.13
Authorizes the court to conduct pre-arraignment reviews and make release decisions. Prohibits the following arrestees from being eligible for pre-arraignment review and release:

1. Arrestees assessed as high risk.
2. Arrestees charged with a serious felony (P.C. 1192.7(c)) or a violent felony (P.C. 667.5(c)).
3. Arrestees pending trial or pending sentencing in a felony matter at the time of arrest.

Requires as court making a release decision to give significant weight to the recommendations and assessment of PAS and to consider any relevant and available information provided by law enforcement, the arrestee, any victim, the prosecution, or the defense before making a release or detention determination.

It the court decides to release the arrestee, the same provisions apply as for the release of medium risk arrestees by PAS described above: release on own recognizance or supervised own recognizance with the least restrictive non-monetary conditions that will assure public safety and appearance in court, with the arrestee being required to sign a release agreement. Permits a court to decline to release a person pending arraignment if there is a substantial likelihood that no condition of pre-trial supervision will reasonably assure public safety or the appearance of the person in court.

Provides that there is a presumption that no condition of pre-trial supervision will reasonably assure public safety pending arraignment if it is shown that any of the following apply:

1. the crime for which the person was arrested was committed with violence against a person, threatened violence, or the likelihood of serious bodily injury, or, the crime involved the person being personally armed with or personally using a deadly weapon or firearm, or personally inflicting great bodily injury;
2. at the time of arrest, the person was on any form of post-conviction supervision, other than court supervision or informal probation (e.g., the person was on formal

continued

probation, parole, post-release community supervision, or mandatory supervision);
3. the arrestee intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime; or
4. the arrestee is currently on pre-trial release and has violated a condition of release.

Modification of Pre-arraignment Release Conditions: P.C. 1320.14
Provides that for good cause shown, a court may, on its own motion, or upon the ex parte application of the arrestee, the prosecution, or PAS, modify the conditions of release with 24 hours' notice, unless time and circumstances do not permit notice within 24 hours.

Release or Detention Determination at Arraignment: P.C. 1320.15–1320.17
Provides that if a defendant is not released by PAS, PAS shall submit its report to the court, including the results of the risk assessment, the charge the defendant was arrested for, any supplemental information reasonably available that addresses the defendant's risk to public safety or risk of failing to appear in court, and recommendations for conditions of release. Requires the prosecution to give notice to the crime victim of the defendant's arraignment, and if requested, any other hearing at which the custody status of the defendant will be determined. If the victim so requests, he or she must be given "a reasonable opportunity" to be heard on the issue of the defendant's custody status. (Note that article I, section 28(b)(7) and (b)(8) of the California Constitution provide that crime victims have the right, upon request, to reasonable notice of all public proceedings and the right to be heard, upon request, at any proceeding involving a post-arrest release decision.)

Requires the prosecution to make a reasonable effort to contact the victim for comment on the defendant's custody status. Provides that in instances where a victim cannot or does not wish to appear at arraignment, the prosecution shall submit any of the victim's comments in writing to the court.

Authorizes the court, if requested by either party, to review and modify the conditions of the defendant's release at arraignment.

continued

Requires the court, at arraignment, to release a defendant on his or her own recognizance, or supervised own recognizance with the least restrictive non-monetary conditions that will reasonably assure public safety and the defendant's return to court, *unless the prosecution files a motion for preventive detention pursuant to P.C. 1320.18.*

Preventive Detention Motions: P.C. 1320.18
Authorizes the prosecution, at arraignment or at any other time during the criminal proceedings, to file a motion to detain a defendant pending trial. Sets forth five grounds for these motions:

1. the crime involved the commission of violence against a person, threatened violence, or the likelihood of serious bodily injury, or, the defendant was personally armed with or personally used a deadly weapon or firearm, or personally inflicted great bodily injury; or
2. at the time of arrest, the defendant was on any form of post-conviction supervision other than informal probation or court supervision (e.g., the defendant was on formal probation, parole, mandatory supervision, or post-release community supervision); or
3. at the time of arrest, the defendant was pending trial or sentencing on a felony; or
4. the defendant intimidated or threatened retaliation against a victim or witness of the current crime; or
5. there is substantial reason to believe that no non-monetary condition of pre-trial supervision will reasonably assure protection of the public or a victim, or the appearance of the defendant in court.

Requires the court, upon the filing of a motion for preventive detention, to make a determination regarding release or detention *before* the preventive detention hearing. Requires the court to consider the information provided by PAS and to give great weight to those recommendations and assessments. Authorizes the court to detain a defendant pending a detention hearing if the court determines that there is a substantial likelihood that no non-monetary condition of pre-trial supervision will assure public safety or assure the appearance of the defendant at the detention hearing. Requires the court to state its reasons on the record. Provides that if the court determines that there is not a sufficient basis for detaining a defendant pending a detention hearing, the court must release the defendant

continued

on his or her own recognizance, or on supervised own recognizance and impose the least restrictive non-monetary conditions of pre-trial release to reasonably assure public safety and the appearance of the defendant in court.

Preventive Detention Hearings: P.C. 1320.19 and 1320.20
P.C. 1320.19 provides that if the defendant is in custody, a detention hearing must be held no later than three court days after the detention motion is filed, and if the defendant is out of custody, the hearing must be held within five court days. Permits the detention hearing to be held in conjunction with arraignment by stipulation of counsel and agreement of the court. Permits either side to seek a continuance of a detention hearing for up to three court days if there is good cause. Requires a detention hearing to be completed at one session, unless the defendant personally waives the right to a continuous detention hearing. (This is similar to the right of a defendant, pursuant to existing P.C. 861, to a continuous preliminary hearing unless the right is personally waived.) Provides that upon the request of the crime victim, the prosecution shall provide notice of the detention hearing, and if requested, the victim shall be given a reasonable opportunity to be heard about the defendant's custody status. Requires the prosecution to make a reasonable effort to contact the victim for comment on the defendant's custody status. Provides that in instances where a victim cannot or does not wish to appear at the detention hearing, the prosecution shall submit the victim's comments, if any, in writing, to the court and counsel.

If a defendant is out of custody when the prosecution files a detention motion, the prosecution may file with the motion an application for an arrest warrant, and the court may issue the warrant requiring the defendant's placement in custody pending the completion of the detention hearing. If a defendant is brought into custody on such a warrant, the detention hearing must be held within three court days of the defendant being placed into custody.

P.C. 1320.20 provides that there is a rebuttable presumption that **no** condition of pre-trial supervision will reasonably assure public safety if the court finds probable cause to believe either:

1. the current crime is a violent felony (P.C. 667.5(c)), or is a felony involving violence against a person, threatened

continued

violence, or a likelihood of serious bodily injury; or the defendant was personally armed with or personally used a deadly weapon or firearm, or personally inflicted great bodily injury; or

2. the defendant is assessed as high risk to the safety of the public or a victim **and** (a) the defendant was convicted of a serious felony (P.C. 1192.7(c)) or violent felony (P.C. 667.5(c)) within the past five years; or (b) the defendant committed the current crime while pending sentencing for a crime described in #1, above; or (c) the defendant has intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime; or (d) at the time of arrest, the defendant was on any form of supervision other than informal probation or court supervision (e.g., the defendant was on formal probation, parole, mandatory supervision, or post-release community supervision).

Requires the prosecution to establish at the detention hearing that there is probable cause to believe the defendant committed the charged crime(s) in cases where there is no indictment or if the defendant has not been held to answer at a preliminary hearing, **if** the defendant challenges the sufficiency of the evidence.

Provides that the court shall makes its decision regarding detention and the determination of probable cause to believe the defendant committed the charge crime(s), based on the defendant's statements if any, offers of proof and argument of counsel, input from a victim, and any evidence presented at the hearing. Permits the court to consider reliable hearsay in making decisions. Provides that the defendant has the right to testify. (Does not indicate that the prosecution would be prohibited from using a defendant's statements or testimony at trial.)

Permits the court to detain a defendant pending trial only if the detention is permitted under the U.S. Constitution and the California Constitution, and the court determines by clear and convincing evidence that no non-monetary condition of pre-trial supervision will reasonably assure public safety or the appearance of the defendant in court. Requires the court to state on the record its reasons for ordering detention pending trial. Provides that if the court determines there is not a sufficient basis for detention, the defendant shall be released on his or her own recognizance,

continued

or supervised own recognizance with the least restrictive non-monetary conditions of pre-trial release to reasonably assure public safety and the appearance of the defendant in court.

Provides that if either party files a writ challenging the court's detention decision, the Court of Appeal shall expeditiously consider the writ.

Requires the court to consider a number of things in making a detention decision or a decision about conditions of release, including, but not limited to:

1. the nature and circumstances of the crime charged;
2. the weight of the evidence against the defendant;
3. the defendant's past conduct, family and community ties, criminal history, and record of court appearances;
4. whether at the time of the current crime or the arrest, the defendant was on probation, parole, or another form of supervised release pending trial, sentencing, appeal, or completion of the sentence for a California state offense, a federal offense, or an out-of-state offense;
5. the nature and seriousness of the risk to the safety of any other person or the community posed by the defendant's release;
6. the recommendation of PAS obtained using a validated risk assessment instrument;
7. the impact of detention on the defendant's family responsibilities and community ties, employment, and participation in education; and
8. any proposed plan of supervision.

Provides that if a defendant is released, the defendant must be notified in a written document about any release conditions and the penalties and other consequences for violating a release condition, including immediate arrest or issuance of an arrest warrant.

Re-opening a Preventive Detention Hearing: P.C. 1320.21
Authorizes the prosecution or defense to file a motion to reopen a detention hearing or for a new hearing, at any time before trial, upon a "showing of newly discovered evidence, facts, or material change in circumstances." Authorizes the court to reopen a detention hearing based on new evidence or facts, or a material change in circumstances brought to the court's attention by PAS.

continued

Provides that upon the request of the crime victim, the prosecution shall provide notice of the reopened detention hearing, and if requested, the victim shall be given a reasonable opportunity to be heard about the defendant's custody status.

Arrest and Bench Warrants: P.C. 1320.22 and 1320.23
P.C. 1320.22 permits the court to issue a warrant for the defendant's arrest upon an ex parte application showing that the defendant has violated a condition of release imposed by the court.

P.C. 1320.23 provides that if the court issues an arrest warrant for a violation of a condition of pre-trial or post-conviction supervision, or a bench warrant for a defendant's failure to appear in court, the court may indicate on the face of the warrant whether, at the time the defendant is arrested on the warrant, the defendant should be booked and released, detained for an initial review, detained pending arraignment, or detained pending a hearing on a supervision violation. Requires the prosecution, law enforcement, or a supervising agency that requests a warrant with a custody status other than book and release to provide the court with the factors justifying a higher level of supervision or detention.

Judicial Council Responsibilities: P.C. 1320.24
Requires the Judicial Council to adopt rules of court and forms to implement this bill; to identify and define data to be reported by each court; to compile and maintain a list of validated pre-trial risk assessment tools; and to train judges on the use of pre-trial risk assessment information when making release and detention decisions, and on the imposition of pre-trial release conditions

The Legislature's Priority Is That Jail Space Be for the Post-conviction Population: P.C. 1320.31
Provides that the Legislature's intent is that to the extent practicable, priority for available jail space be for the post-conviction population.

Remaining References to Bail in the Penal Code: P.C. 1320.32
Provides that all references in the Penal Code to "bail" will now refer to the procedures specified in this new chapter.

continued

Defendants Already Released on Bail as of October 1, 2019: P.C. 1320.33
Provides that defendants released on bail before October 1, 2019, will remain on bail pursuant to the terms of their release and that defendants in custody on October 1, 2019, shall be considered for release pursuant to new P.C. 1320.8, and if not released, shall receive a risk assessment and be considered for release or detention pursuant to this chapter.

[Since statutory bail forfeiture provisions are repealed as of October 1, 2019, it is unclear what would happen in situations in which a defendant already released on bail as of October 1, 2019, fails to appear after October 1, 2019.]

Funding: P.C. 1320.27, 1320.28, and 1320.29
Requires the Dep't of Finance, in consultation with the Judicial Council and the Chief Probation Officers to estimate the level of funding needed to support both pre-trial assessment services and pre-trial supervision services. Provides that upon appropriation by the Legislature, the Judicial Council shall allocate funds to local courts for assessment services and to local probation departments for supervision services. Specifically provides that the County of Santa Clara's Office of Pretrial Services is eligible for funding for supervision services.

[Uncodified Section Five of this bill provides that to the extent practicable, the Judicial Council shall coordinate with the Chief Probation Officers of California to provide training efforts, conduct joint training, and collaborate in necessary startup functions to carry out this act.]

[***Note***: Referendum proponents need 365,880 signatures and turned in over 500,000 signatures on November 20, 2018. Signatures are currently being checked. A duly qualified referendum challenging a statute stays the implementation of the statute until after the vote of the electorate. See Art. II, section 10(a) of the California Constitution and *Assembly of the State of California v. Deukmejian* (1982) 30 Cal.3d 638, 654-657. If the referendum qualifies for the November 2020 ballot, SB 10 would go into effect only if SB 10 is approved by the voters.]

[***Note***: There are bail cases pending in the California Supreme Court, such as *In re Humphrey* (#S247278), *In re Webb* (#S247074), and *In re White* (#S248125).]

P.C. 1336
(Amended)
(Ch. 70) (AB 1934)
(Effective 1/1/2019)

Revises the definition of "dependent adult" to clarify that a person qualifies as a dependent adult regardless of whether he or she lives independently.

(P.C. 1336 permits specified witnesses, including dependent adults, to undergo a conditional examination in order to preserve testimony for trial.)

[According to the legislative history of this bill, its purpose is to ensure that law enforcement, social workers, dependent adults themselves, and their families understand that dependent adults are protected by laws pertaining to dependent adults even if they live independently.]

P.C. 1369
P.C. 1370
P.C. 1370.1
P.C. 1375.5
(Amended)
(Ch. 1008) (SB 1187)
(Effective 1/1/2019)

and

P.C. 1370
P.C. 1370.01
P.C. 1372
(Amended)
(Ch. 34) (AB 1810)
(Effective 6/27/2018)

Amends statutes relating to incompetent defendants in two major ways. SB 1187, effective January 1, 2019, reduces the treatment period for incompetent defendants from three years to two years and grants P.C. 4019 conduct credits to those treated in a county jail. AB 1810, effective June 27, 2018, permits judges to send an incompetent defendant to a pre-trial mental disorder diversion program pursuant to new P.C. 1001.36. (See above for more information.)

SB 1187
Amends P.C. 1370(c)(1) (incompetent defendants) and 1370.1(c)(1) (defendants who are both incompetent and developmentally disabled) to reduce, from three years to two years, the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial.

Amends both P.C. 1370 and 1370.1 to delete the requirement for a hearing at the 18-month mark when a defendant has been committed or on outpatient status for 18 months and is still hospitalized or on outpatient status.

Amends P.C. 1375.5 to provide that an incompetent defendant shall receive P.C. 4019 conduct credits (50%) for all time during which he or she is confined in county jail and for which he or she is otherwise eligible. That is, an incompetent defendant undergoing treatment in a county jail will now earn half-time credits, thereby further shortening the already short two-year maximum period of treatment. Therefore, an incompetent defendant treated in a county jail will most likely receive less than one year of treatment because of the 50% conduct credits and the existing requirement (P.C. 1370(c)(1)) that a defendant who

continued

has not recovered competence be returned to court at least 90 days before the expiration of the term of commitment.

[This bill also amends P.C. 4019 to provide that 50% conduct credits apply to an incompetent defendant being treated in a county jail, consistent with the amendment to P.C. 1375.5.]

[Incompetent defendants treated in a facility other than county jail (e.g., a state hospital) continue to *not* be eligible for P.C. 4019 conduct credits. The California Supreme Court in *People v. Waterman* (1986) 42 Cal.3d 565 noted that the incompetence statutes do not expressly allow conduct credit and held that persons confined for hospital treatment as incompetent to stand trial are not denied equal protection of the laws to the extent that they, unlike offenders committed to CRC (the old California Rehabilitation Center) for treatment of drug addiction, cannot earn conduct credits. The amendment to P.C. 1375.5 provides for P.C. 4019 conduct credits only for incompetent defendants being treated in a county jail.]

[If a defendant does not regain competency by the time two years are up, existing provisions permit the court to order a conservatorship investigation if the defendant is gravely disabled (P.C. 1370(c)(2)), or dismiss the charges pursuant to P.C. 1385 unless the defendant is facing a violation of mandatory supervision in which case the court shall reinstate mandatory supervision and order mental health treatment (see P.C. 1370(d) and (e); 1370.1(c)(2)). A defendant may also be subject to the Lanterman-Petris-Short Act (W&I 5000–5550), or subject to commitment and detention pursuant to W&I 6502 if he or she has a developmental disability and is charged with a specified crime (see P.C. 1370.1(c)(2)).]

[The legislative history of SB 1187 indicates that a major reason for reducing treatment time was a concern about the increasing number of incompetent defendants being treated in state hospitals, developmental centers, and county jails and the need to increase the availability of placements in treatment facilities. Reducing treatment time frees up space in treatment facilities. In addition, the legislative history asserts that "[s]tudies show that the vast majority (80–90%) become trial-competent within six months of starting treatment, and nearly all who attain competency do so within a year. Those not restored within a year are believed to be unrestorable."]

continued

AB 1810
Amends P.C. 1370 and 1370.01 to authorize a judge, after finding a defendant incompetent to stand trial and before the defendant is transported to a facility for treatment, to find that the defendant is an appropriate candidate for mental disorder diversion pursuant to P.C. 1001.36. (See P.C. 1001.36, above). If the defendant meets eligibility requirements, the court may grant diversion. Provides that if an incompetent defendant completes P.C. 1001.36 diversion, he or she will no longer be deemed incompetent to stand trial. (Pursuant to P.C. 1001.36, a defendant who successfully completes diversion will have all charges dismissed.)

Adds to P.C. 1370 a subparagraph providing that if an incompetent defendant's attorney or jail medical or mental health staff provide the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge that the defendant is still incompetent, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. Provides that if the expert opines that the defendant has regained competence, then the court shall proceed as if a certificate of restoration of competency has been returned, except that there will not be a presumption of competency, and a hearing shall be held to determine whether the defendant is competent.

Amends P.C. 1372 to add confidential electronic transmission to the methods (certified mail, return receipt requested) that a certificate of restoration of competency may be filed with a court.

P.C. 1385
(Amended)
(Ch. 1013) (SB 1393)
(Effective 1/1/2019)

Eliminates subdivision (b) for the purpose of authorizing judges to strike five-year serious felony P.C. 667(a) prior conviction enhancements (Proposition 8 priors). SB 1393 also amends P.C. 667 to eliminate the prohibition on striking five-year priors. Previously, a court had no power to dismiss, or strike punishment for, a five-year P.C. 667(a) prior conviction. (See the last paragraph of this section for information about why SB 1393 may not be valid.)

Pursuant to existing P.C. 1385(c)(1) (re-lettered to P.C. 1385(b)(1) beginning January 1, 2019), if a court has the authority to strike or dismiss an enhancement, it has the power to strike the additional punishment for the enhancement instead. Therefore, if a judge has the power to strike or dismiss a five-year prior, he or she will also

continued

have the power to leave the enhancement intact and strike only the punishment.

Subdivision (a) continues to require that the reasons for a dismissal be stated orally on the record. It also continues to require that the reasons be set forth in an order entered upon the minutes if requested by either party or if the proceedings are not being recorded electronically or by a reporter.

The courts will most likely apply this amendment retroactively, as they did with the amendments to P.C. 12022.53 and 12022.5 made by last year's SB 620, which permitted judges to dismiss or strike punishment for firearm enhancements effective January 1, 2018. Retroactive application means that SB 1393 would apply to all pending cases, no matter when the crime was committed, and to all cases not yet final on appeal as of January 1, 2019. Judges who want to dismiss or strike punishment for five-year priors will need to continue sentencing into 2019, when SB 1393 becomes effective. Judges who decide they would not exercise their discretion to strike five-years priors even if they had such discretion now, can move forward with sentencing in 2018 after making a clear record that they understand their discretion beginning January 1, 2019 and that continuing sentencing into 2019 will make no difference in the sentence the court intends to impose because the court has decided it will not dismiss or strike punishment for the five-year prior(s).

[*Background*: Five-year P.C. 667(a) priors were created by Proposition 8 in June of 1982. The California Supreme Court ruled in *People v. Fritz* (1985) 40 Cal.3d 227 that trial courts had the authority to strike these priors because there was no express language eliminating such authority. The Legislature abrogated the *Fritz* decision by amending P.C. 667 and enacting P.C. 1385(b) as urgent legislation effective in May 1986, in order to eliminate a court's authority to strike.]

[Validity of SB 1393: An argument can be made that the elimination of the prohibition on striking five-year priors is not valid because SB 1393 did not receive a two-thirds vote of the Legislature. Since Proposition 8 created P.C. 667 in June 1982, P.C. 667 has provided that it may only be amended by the electorate, or by a two-thirds vote of both houses of the Legislature. The 1986 amendment that incorporated into P.C. 667 the prohibition on judges striking five-year priors ("in compliance with subdivision (b) of Section 1385"), received well over a 2/3 vote of both the Assembly and the Senate. SB 1393, which eliminates "in compliance with subdivision (b) of Section 1385" from P.C. 667 received less than a two-thirds vote in each house. The Assembly vote was 41-33-6 and the Senate vote was 23-14-2. (54 is 2/3 of the Assembly and 27 is two-thirds of the Senate.)]

P.C. 1417.9
(Amended)
(Ch. 972) (AB 2988)
(Effective 1/1/2019)

Expands this section pertaining to the retention by a government entity of biological material related to a criminal case to apply to "any object or material that contains or includes biological material" instead of simply "biological material."

Provides that the required notice to a felon inmate that biological material is not going to be retained for the duration of the inmate's incarceration must be sent to the current location where the inmate is incarcerated. Previously, this section simply required that the inmate be notified. Continues to require notice to any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General before destruction.

Eliminates the requirement that a declaration of innocence be filed within one year of the judgment of conviction and instead permits a declaration of innocence filed at any time to operate as an objection to destruction. Continues to provide that a motion for DNA testing pursuant to existing P.C. 1405 or a request that the material not be destroyed because the inmate intends to file a P.C. 1405 motion within one year, may operate as an objection to destruction. Continues to require that any objection to destruction be received by the government entity within 180 days of the notice of destruction being sent.

P.C. 1473.7
(Amended)
(Ch. 825) (AB 2867)
(Effective 1/1/2019)

Makes a number of changes to this statute to make it more favorable to convicted persons seeking to vacate convictions. (P.C. 1473.7 permits a person to file a motion to vacate a conviction or sentence when there is newly discovered evidence of actual innocence, or where a conviction or sentence is legally invalid due to prejudicial error that damaged a defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or no contest.)

Amends subdivision (a) to provide that a person no longer "in criminal custody" may file a motion to vacate. (Previously, a person no longer "imprisoned or restrained" could file a motion.) Adds that a "finding of legal invalidity may, but need not, include a finding of ineffective assistance

continued

of counsel" (i.e., a court may find a conviction legally invalid without having to find ineffective assistance of counsel.)

Amends subdivision (b) to provide that a motion must be deemed timely filed at any time in which the person filing the motion is no longer in criminal custody. Permits a motion to be deemed *un*timely filed if it is not filed with reasonable diligence after the later of the following:

1. The moving party receives a notice to appear in immigration court or other notice asserting the conviction or sentence as a basis for removal **or** the denial of an application for an immigration benefit, lawful status, or naturalization.
2. Notice that a final removal order has been issued against the moving party based on the existence of the conviction or sentence sought to be vacated.

(Previously, subdivision (b) required that a motion to vacate be filed with reasonable diligence after the later of the date the moving party receives a notice to appear in immigration court or other notice asserting the conviction or sentence as a basis for removal, or, the date a removal order based on the conviction or sentence, becomes final. Now a convicted person can bring such a motion after the denial of a benefit or the denial of lawful status or naturalization, and the timing with respect to a removal order is lengthened: It is changed from the date of a final removal order to notice that a final removal order has been issued.)

Amends subdivision (d) to permit the court to hold a hearing without the moving party or the moving party's attorney if the court finds good cause. (Previously, this subdivision permitted the court to hold the hearing without the moving party present if counsel for the moving party was present and the court found good cause for the moving party's absence.) Adds that the court may grant the motion to vacate without a hearing if the prosecution has no objection to the motion.

Amends subdivision (e) (regarding the court's ruling on a motion) to make several changes:

1. Adds that when a motion to vacate is based on adverse immigration consequences, the moving party is required to establish that the conviction or sentence being

continued

challenged is currently causing or has the potential to cause removal **or** the denial of an application for an immigration benefit, lawful status, or naturalization.

2. Adds that there is a *presumption* of legal invalidity if the moving party pleaded guilty or no contest pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences. (An example is P.C. 1000 deferred entry of judgment for drug offenses, which for 20 years, until January 1, 2018, required a guilty plea for participation in the program and provided that a plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty was entered if the defendant failed the program.)
3. Adds that when ruling on a motion to vacate based on immigration consequences, the only finding the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or no contest. (This is a restatement of the language in subdivision (a)(1) that sets forth adverse immigration consequences as one of the two grounds for a P.C. 1473.7 motion to vacate.)
4. Requires the court to specify the basis for its conclusion only when ruling on a motion to vacate based on newly discovered evidence of actual innocence. (Previously, the court was required to state the basis for its conclusion for granting or denying any P.C. 1473.7 motion. Now it is required to state a basis only for newly discovered evidence motions.)

Adds a new subdivision (g) to provide that a court may only issue a specific finding of ineffective assistance of counsel as a result of a P.C. 1473.7 motion on immigration grounds if the attorney being accused of ineffectiveness is given timely advance notice of the hearing by the moving party or the prosecutor, pursuant to C.C.P. 416.90 (which provides that a summons may be served "by delivering a copy of the summons and complaint to such person or to a person authorized by him to receive service of process.")

continued

[Uncodified Section One of this bill sets forth that the Legislature's intent is to provide clarification for the courts about P.C. 1473.7 in order to ensure uniformity throughout California and efficiency in the statute's implementation. It also sets forth the intent that a P.C. 1473.7 motion shall be heard and may be granted, notwithstanding a prior order setting aside an adjudication of guilt or a prior order dismissing or reducing one or more charges. (For example, the dismissal of a conviction pursuant to P.C. 1203.4 would not prevent the granting of a motion to vacate.)

P.C. 1526
(Amended)
(Ch. 176) (AB 2710)
(Effective 1/1/2019)

Eliminates the requirement of a telephone conversation between a magistrate and an officer/affiant for the taking of the affiant's oral oath during the obtaining of a search warrant, so that a search warrant may be issued completely electronically by facsimile, email, or computer server. Requires the officer/affiant to sign under penalty of perjury his or her affidavit in support of the search warrant, with the signature being a digital or electronic signature if email or computer server are used to obtain the warrant.

Continues to permit the magistrate to accept an oral statement made under penalty of perjury that is recorded and transcribed.

This bill also makes similar amendments to P.C. 817 regarding arrest warrants.

[According to the legislative history of this bill, its purpose is to make the search warrant process faster and more efficient, especially for routine search warrants such as for obtaining a blood sample in a driving under the influence case.]

P.C. 2064.1
(New)
(Ch. 782) (SB 960)
(Effective 1/1/2019)

Requires CDCR to submit, by October 1st of each year and post on its Internet Web site, a report to the Legislature on CDCR's efforts to prevent suicides and attempted suicides among inmates. Sets forth a number of items the report must include, such as staff training on suicide prevention and response.

P.C. 2067
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Requires CDCR to begin reducing private in-state male contract corrections facilities in a manner that maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity.

P.C. 2084
(Amended)
(Ch. 512) (SB 1138)
(Effective 1/1/2019)

Requires CDCR to make available "plant-based meals" to state prison inmates, on "an overall cost-neutral basis." Defines "plant-based meals" as entire meals that contain no animal products or byproducts, including meat, poultry, fish, dairy, or eggs.

[According to the legislative history of this bill, its purpose is to ensure that religious, ethical, and dietary needs are respected. The legislative history also states that plant-based meals can be healthier than other types of meals, and that eating a plant-based diet results in fewer greenhouse gas emissions.]

P.C. 2644
(New)
(Ch. 174) (AB 2550)
(Effective 1/1/2019)

Prohibits a state prison male correctional officer from conducting a pat-down search of a female inmate unless the prisoner presents a risk of immediate harm to herself or others, or risk of escape, and there is not a female correctional officer available to conduct the search.

Prohibits a state prison male correctional officer from entering into an area of the institution where a female inmate may be in a state of undress, and prohibits a male officer being in an area where a female inmate in a state of undress can be viewed, including, but not limited to, restrooms, shower areas, and medical treatment areas, unless an inmate presents a risk of immediate harm to herself or others, or if there is a medical emergency in the area. Prohibits a male correctional officer from entering into these areas if there is a female correctional officer who can resolve the situation in a safe and timely manner without the male officer's assistance.

Requires that staff of the opposite gender announce their presence when entering a housing unit, in order to prevent "incidental viewing."

Requires that if a male officer conducts a pat down search or enters a prohibited area under one of the exceptions

continued

specified above, the circumstances be documented within three days of the incident. Requires the warden to review the documentation and requires the institution to retain the documentation for reporting purposes.

Authorizes CDCR to promulgate regulations to implement this section.

[New P.C. 2644 essentially codifies CDCR regulations that are already in place.]

P.C. 2716.5
(New)
(Ch. 53) (SB 866)
(Effective 6/27/2018)

Establishes a Pre-Release Construction Trades Certificate Program in CDCR, in order to increase employment opportunities in the construction trades for state prison inmates upon release. Requires CDCR to establish an advisory committee composed of representatives of building and construction trades employee organizations, the State Building and Construction Trades Council of California, joint apprenticeship training programs, the Prison Industry Authority, the Division of Apprenticeship Standards, the Labor and Workforce Development Agency, and any other representatives that CDCR determines are appropriate. Tasks the committee with developing guidelines for the program and exploring the awarding of "formal credit" for specified apprenticeship hours. The bill does not define "formal credit," but may mean conduct credits that would reduce a state prison inmate's sentence.

P.C. 3003
(Amended)
(Ch. 226) (SB 1199)
(Effective 1/1/2019)

Adds that a state prison inmate released onto parole or post-release community supervision (PRCS) and who was committed to prison for a sex offense requiring P.C. 290 registration, shall, "through all efforts reasonably possible" be returned to the *city* that was the last legal residence of the inmate prior to incarceration, or to a close geographic location in which the inmate has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to his or her victim.

[According to the legislative history of this bill, its purpose is to reduce recidivism by placing inmates in locations where they have family or community connections.]

continued

[Note: Existing law in P.C. 3003 already requires that any inmate released from state prison on parole or PRCS be returned to the county that was the last legal residence of the inmate prior to incarceration unless it is determined that the inmate should be returned elsewhere for victim or witness safety reasons, or because the inmate has a work offer or supportive family in another location P.C. 3003(f) and (h) continue to permit victims and witnesses of specified crimes to request that an inmate not be released to a location within 35 miles of the victim or witness. P.C. 3003(g) continues to provide that inmates released on parole for P.C. 288 (child molestation) or P.C. 288.5 (continuous sexual abuse) who are deemed high risk to the public shall not be placed within one-half mile of a school.]

P.C. 3007.05
(Amended)
(Ch. 979) (SB 1050)
(Effective 1/1/2019)

Requires that the transitional services CDCR is already required to provide to an inmate who is serving a state prison sentence at the time of exoneration (housing, job training, mental health services), be offered within the first week of an inmate's exoneration and again within the first 30 days of exoneration. Permits transitional services to be offered for more than one year if the exonerated person qualifies for services beyond one year.

Expands the types of services with which CDCR is required to assist an exonerated inmate, to the following: enrollment in Medi-Cal, enrollment in the CalFresh program (food stamps), referral to the Employment Development Dep't for workforce services, and enrollment in SSI.

Requires CDCR to pay each exonerated inmate $1,000 upon release from state prison.

P.C. 3007.08
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Requires CDCR, the Division of Juvenile Justice, and the DMV to enter into an interagency agreement to ensure that a juvenile offender released from a state juvenile facility has a valid identification card. Applies to juvenile offenders who previously held a California driver's license or identification card, and to juvenile offenders who provide acceptable proof of their true name, date of birth, social security number, legal presence in the U.S., and California residency.

P.C. 4001.2
(New)
(Ch. 281) (AB 2568)
(Effective 1/1/2020)

Beginning January 1, 2020, requires a county jail, upon detaining a person, to ask if he or she has served in the U.S. military, and requires the response to be documented. Requires a county jail to make this information available to the detained person, his or her attorney, and the district attorney.

The purpose of this bill is to help veterans take advantage of resources and programs for veterans within the criminal justice system, such as veteran treatment courts, military diversion (e.g., P.C. 1001.80), and 1170.9 (alternate commitment for veterans.)

P.C. 4002.5
(New)
(Ch. 944) (AB 2507)
(Effective 1/1/2019)

By January 1, 2020, requires sheriffs and county jail administrators to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in or sentenced to county jail, so that they can express breast milk and have it delivered to their infant or toddler. Requires the policy to include:

1. medically appropriate support and care related to the cessation of lactation or weaning;
2. procedures for milk expression, storage, and later delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator; and
3. procedures for conditioning an inmate's participation in the program upon the inmate undergoing drug screening.

Requires that the breast milk feeding policy be posted in the jail and communicated to staff.

P.C. 4019
(Amended)
(Ch. 1008) (SB 1187)
(Effective 1/1/2019)

Adds a defendant confined in or committed to a county jail treatment facility after having been found incompetent to stand trial pursuant to P.C. 1367–1376 to those defendants who are eligible to earn 50% conduct credits. Therefore, an incompetent defendant undergoing treatment in a county jail will now earn half-time credits, thereby further shortening the already short two-year maximum period of treatment. See P.C. 1369–1375.5, above, for more information about the reduction of the maximum treatment period for incompetent defendants from three years to two years.

continued

The amendment to P.C. 4019 is consistent with the amendment made by this bill to P.C. 1375.5.

[Incompetent defendants treated in a facility other than county jail (e.g., a state hospital) continue to *not* be eligible for P.C. 4019 conduct credits. The California Supreme Court in *People v. Waterman* (1986) 42 Cal.3d 565 noted that the incompetence statutes do not expressly allow conduct credit and held that persons confined for hospital treatment as incompetent to stand trial are not denied equal protection of the laws to the extent that they, unlike offenders committed to CRC (the old California Rehabilitation Center) for treatment of drug addiction, cannot earn conduct credits. The amendment to P.C. 1375.5 provides for P.C. 4019 conduct credits only for incompetent defendants being treated in a county jail.]

P.C. 4577
(New)
(Ch. 333) (SB 1355)
(Effective 1/1/2019)

Creates the new infraction crime of knowingly and intentionally operating an unmanned aircraft system (e.g., a drone) on or above the grounds of a state prison, jail, or juvenile hall/camp/ranch. Punishable by a fine of $500.

Specifies these exceptions: a person employed by a prison, or a jail, or a county department that operates a juvenile hall/camp/ ranch, who operates an unmanned aircraft system within the scope of his or her employment or who receives prior permission from CDCR (in the case of a state prison), or the county sheriff (in the case of a jail), or the county department that operates a juvenile facility.

[According to the legislative history of this bill, there are a number of concerns the bill addresses, including contraband (e.g., drugs, cell phones, weapons) being dropped into custodial facilities, and information being gathered to aid in prisoner escapes or riots.]

P.C. 4802.5
(New)
P.C. 4812
P.C. 4852.06
P.C. 4852.16
P.C. 4852.18
(Amended)
(Ch. 824) (AB 2845)
(Effective 1/1/2019)

The Pardon and Commutation Reform Act of 2018.

New P.C. 4802.5 requires the Governor to make the application forms for pardons and commutations available on the Governor's Office Internet Web site. Requires the Governor to promptly forward all pardon applications received to the Board of Parole Hearings (BPH) for an investigation and recommendation to the Governor.

continued

Provides that applications supported by a certificate of rehabilitation may be granted by the Governor without investigation and recommendation by BPH, in accordance with P.C. 4852.16.

[Existing P.C. 4812 already requires BPH to investigate applications for reprieves, pardons, and commutations upon the Governor's request, and to make recommendations to the Governor. New P.C. 4802.5 requires the Governor to now forward all pardon applications to BPH. Existing P.C. 4852.16 provides that a certified copy of a certificate of rehabilitation transmitted to the Governor constitutes an application for a pardon and that upon its receipt, the Governor may issue a pardon without any further investigation. P.C. 4852.16 continues to provide that the Governor is prohibited from issuing a pardon to a person "twice convicted of felony" unless a majority of the judges of the Supreme Court agree in writing.]

Amends P.C. 4812 to add that BPH is required to consider expedited review of an application if a petitioner indicates there is an urgent need for a pardon or commutation, including when there is a pending deportation order or deportation proceeding. Adds that an applicant is eligible for a pardon, commutation, or certificate of rehabilitation without regard to immigration status. Requires BPH to provide electronic or written notification to an applicant when it receives the application and when it issues its recommendation. Does not require BPH to notify the applicant about the reasons for its recommendations, and provides that the reasons shall remain confidential.

Amends P.C. 4852.06 to permit the filing of a petition for a certificate of rehabilitation in the county in which the person was convicted or in the county where a P.C. 1203.4 dismissal was granted. (Previously, this section provided for filing only in the county where the person currently resides.)

Amends P.C. 4852.16 to require BPH to review a certificate of rehabilitation issued by a court, within one year of receiving the certificate and to issue a recommendation as to whether the Governor should pardon that individual. Requires the Governor to establish criteria for this process, but exempts the establishment of criteria from the administrative regulation requirements of Gov't Code 11340–11361.

continued

Amends P.C. 4852.18 to require the clerk of the Superior Court in each county to post on the court's Internet Web site the forms for a certificate of rehabilitation and pardon. [This section already requires BPH to provide the clerk a set of sample forms and already requires the clerk to have a sufficient number of forms printed to meet the needs of the people of the county.]

P.C. 5007.7
(New)
(Ch. 764) (AB 2533)
(Effective 1/1/2019)

Provides that a state prison inmate with a trust account of $25 or less for 30 consecutive days, shall be deemed indigent and shall receive "basic supplies necessary for maintaining personal hygiene." Also requires an indigent inmate to be provided with sufficient resources to communicate with and access the courts, including, but not limited to, stamps, writing materials, envelopes, paper, and the services of a notary.

P.C. 6402.5
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Sets forth requirements for the Contraband Interdiction Pilot Program at the Corcoran Substance Abuse Treatment Facility and State Prison that was authorized by the Budget Act of 2018. Requires CDCR to design the program to require that entrance screening be conducted on every person and package entering the prison, 24 hours a day, seven days a week. Requires CDCR to submit a report to the Legislature by February 1, 2021, that includes information such as how contraband was brought in; when the violation occurred; whether the violator was an inmate, staff member, visitor, volunteer, or contractor; type of contraband; how the violation was discovered; the disciplinary actions taken against staff and inmates; and an assessment of whether the pilot program caused declines in visitation or in the frequency of violence or lock downs in prison.

P.C. 11105
(Amended)
(Ch. 965) (AB 2133)
(Effective 1/1/2019)

Amends subdivision (b)(9) to expand access by public defenders and criminal defense attorneys to state summary criminal history information furnished by the Attorney General. Appears to permit defense attorneys to obtain the actual rap sheet of witnesses as long as "the information is requested in the course of representation." Adds juvenile delinquency proceedings, appeals, and post-conviction motions to the types of cases (criminal cases) for which public defenders and criminal defense attorneys are entitled to receive state rap sheet information from the Attorney General.

continued

Removes this limitation from subdivision (b)(9): "and if authorized access by statutory or decisional law," and adds this language in its place: "if the information is requested in the course of representation."

Subdivision (b) requires the Attorney General to provide state summary criminal history information to a variety of persons and entities (courts, prosecutors, probation officers, parole officers, public defenders, defense attorneys), if needed in the course of their duties. Paragraph (9), which pertains to public defenders and criminal defense attorneys, contained a limitation on access, requiring that access be authorized "by statutory or decisional law." This bill deletes that limitation. Paragraph (9) now provides: "A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and post-conviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or post-release community supervision revocation or revocation extension proceeding, *if the information is requested in the course of representation."* (Emphasis added).

The original version of the bill added appeal and post-conviction motions to the list of proceedings for which defense attorneys may obtain rap sheet information if access is authorized by statutory and decisional law. The second and final version of the bill removed "and if authorized access by statutory or decisional law" and replaced it with "if the information is requested in the course of representation."

The legislative history of this bill indicates that California Attorneys for Criminal Justice (CACJ) is the sponsor of this bill and is concerned about prosecutors not turning over the *actual* rap sheets of prosecution witnesses, and instead supplying a summary of only the information that a defendant is legally entitled to. CACJ also complains that witness rap sheet information is not turned over early enough so that it can be thoroughly investigated before trial. The legislative history of the bill labels the "statutory or decisional law" requirement as "ambiguous limiting language" that thwarts a defendant's timely receipt of information about witnesses and makes it difficult for defense attorneys to adequately represent their clients. It appears that the new language entitles criminal defense

continued

attorneys to obtain actual state rap sheets directly from the Attorney General if they are "requested in the course of representation." There does not appear to be any specific limitation on *whose* rap sheet may be obtained. Victims, prosecution witnesses, defense witnesses, and law enforcement officers could all be included. It is not known whether the Attorney General will redact any rap sheets before turning them over, or whether the Attorney General will require a criminal defense attorney to make a showing that the subject of the rap sheet request is a material witness in the case. There also does not appear to be any limitation on when a rap sheet may be requested, so that, for example, a defense attorney may be able to request rap sheets at the arraignment stage of the proceedings rather than having to wait until 30 days before trial, as P.C. 1054.7 provides.

Note that P.C. 13300 is not amended by this bill and continues to require a local criminal justice agency to furnish local summary criminal history information to a public defender or attorney of record when representing a person in a criminal case "and when authorized access by statutory or decisional law." Therefore, the way that local rap sheet information is handled has not changed.

There are a number of issues that this amendment presents that are beyond the scope of this publication. Here are a few of those issues:

1. Will other California laws (e.g., the privacy of arrest records, discovery statutes) affect this amendment?
2. Will the Attorney General turn over actual rap sheets and if so, will any information be redacted?
3. Will the Attorney General require a showing of proof that the subject of a rap sheet request is a material witness whose credibility is likely to be critical to the outcome of the trial? (P.C. 1054.1(d) requires disclosure to the defense of the existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.)
4. How will this amendment affect a local prosecutor's obligation to supply Brady criminal history information about trial witnesses, if defense attorneys can obtain actual rap sheets directly from the Attorney General?

P.C. 11105.2
(Amended)
(Ch. 300) (AB 2461)
(Effective 1/1/2019)

Requires DOJ to provide subsequent state or federal arrest or disposition notification to the State Dep't of Social Services, the Medical Board of California, and the Osteopathic Medical Board of California, to assist in fulfilling employment, licensing, or certification duties. Continues to permit DOJ to provide subsequent arrest information to all other entities authorized to receive state or federal criminal history information. [Previously P.C. 11105.2 permitted, but did not require, DOJ to provide subsequent arrest information to any entity authorized to receive state or federal criminal history information. Now it is *required* to provide subsequent arrest or disposition information to the three entities specified above.]

P.C. 11106
(Amended)
(Ch. 898) (SB 1200)
(Effective 1/1/2019)

Adds information reported to DOJ pursuant to P.C. 18120(e) to the list of things that the Attorney General is required "to keep and properly file a complete record of." P.C. 18120(e) requires a court to transmit to DOJ the receipt showing that the subject of a gun violence restraining order has surrendered firearms and ammunition to a local law enforcement agency or has sold or transferred them to a licensed firearms dealer.

P.C. 11108
(Amended)
P.C. 11108.2
(New)
P.C. 11108.3
P.C. 11108.5
P.C. 11108.10
(Amended)
(Ch. 864) (AB 2222)
(Effective 1/1/2019)

Extends the local law enforcement firearms reporting requirement to all peace officers within the state and requires that the information be reported within seven calendar days.

Requires a law enforcement agency to enter into the DOJ Automated Firearms System every firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, within seven calendar days after being notified of the precipitating event.

Also extends to all peace officers within California the requirement to report to DOJ within seven calendar days, available information necessary to identify and trace the history of recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime.

Previously, these firearms reporting requirements applied only to sheriffs and police chiefs and provided no reporting deadline.

continued

Defines "law enforcement agency" as a police or sheriff's department, and any state agency or department that employs peace officers, such as CHP, the Dep't of Fish and Wildlife, the University of California or California State University Police Departments, and the police department of any school, district, transit district, airport, or harbor, port, or housing authority.

P.C. 11160
(Amended)
(Ch. 164) (AB 1973)
(Effective 1/1/2019)

Adds health practitioners employed by a local government agency to the list of health practitioners (employed by a health facility, clinic, physician's office, local or state public health department) who are required to make a report to local law enforcement when a patient is reasonably suspected of suffering from an injury caused by a firearm, or an injury caused by assaultive or abusive conduct. Adds that "employed by a local government agency" includes an employee of an entity under contract with a local government agency to provide medical services.

The purpose of this bill is to make emergency medical technicians and paramedics, who often have first contact with crime victims, mandated reporters for firearm and assaultive injuries, even if they work for a private entity, if that private entity has a contract with a local government agency to provide medical services.

Adds a cross-reference to existing H&S 11162.5(a) to clarify that "health practitioner" as used in P.C. 11160 has the same definition as that in H&S 11162.5(a). Pursuant to H&S 11162.5(a), "health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, emergency medical technician, paramedic, coroner, etc.

P.C. 13152
(Amended)
(Ch. 814) (AB 2080)
(Effective 1/1/2019)

Provides that detention facilities must report to DOJ *both* inmate admissions to and releases from detention facilities within 30 days of the admission or release. (Previously, the reporting requirement was worded as admissions *or* releases, leaving DOJ with incomplete data.)

P.C. 13509
(New)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Establishes the Innovations Grant Program within the Commission on Peace Officer Standards and Training (POST) to award grants of between $25,000 to $200,000 on a competitive basis to qualified public and private entities for the purpose of fostering innovations in law enforcement training and procedures with the goal of reducing the number of officer-involved shootings. Requires that the grants awarded support one or more of the following purposes: training and workshops on issues of implicit bias, use of force and de-escalation, cultural diversity and awareness, community policing, and developing and providing wellness programs for law enforcement officers. Requires that priority in awarding grants go to agencies that have the highest per-officer incidence rate of officer-involved shootings and to organizations that are located in those communities.

P.C. 13516.5
(New)
(Ch. 973) (AB 2992)
(Effective 1/1/2019)

Requires the Commission on Peace Officer Standards and Training (POST) to develop and implement a course for training peace officers about the commercial sexual exploitation of children and victims of human trafficking. Specifies a number of topics the court must include, such as indicators that a person is being exploited and appropriate interview techniques. Requires POST to develop the course with input from specified groups, including survivors of commercial sexual exploitation and advocates who have expertise in commercial sexual exploitation and human trafficking.

P.C. 13519
(Amended)
(Ch. 137) (SB 1331)
(Effective 1/1/2019)

Expands the Commission on Peace Officer Standards and Training (POST) domestic violence course for law enforcement officers to require training in the "assessment of lethality or signs of lethal violence in domestic violence situations."

According to the legislative history of this bill, lethality assessments are protocols designed for law enforcement first responders. Victims are asked a series of questions based on research about factors linked to lethality. Certain responses will trigger a 'protocol referral,' which is an immediate connection with a local advocacy program. The goal is to prevent domestic violence homicides, serious injury, and re-assault by encouraging more domestic violence victims to utilize the support and shelter services of domestic violence programs.

P.C. 13519.41
(New)
(Ch. 969) (AB 2504)
(Effective 1/1/2019)

Requires the Commission on Peace Officer Standards and Training (POST) to develop and implement a course of training about "sexual orientation and gender identity minority groups," that will be incorporated into the basic training for law enforcement officers and dispatchers. Requires POST to consult with members of law enforcement and the community who have expertise in these areas, including one male, one female, and one transgender person. Requires the course of training to include topics such as creating an inclusive law enforcement workplace, the difference between sexual orientation and gender identity, and how law enforcement can respond effectively to domestic violence and hate crimes involving sexual orientation and gender identity minorities.

P.C. 13603
(Amended)
(Ch. 36) (AB 1812)
(Effective 6/27/2018)

Increases, from 480 to 520, the number of hours of training that CDCR is required to provide to a correctional peace officer cadet who starts training on or after January 1, 2019.

P.C. 13650
(New)
(Ch. 978) (SB 978)
(Effective 1/1/2019)

Adds new Title 4.7 in Part 4 of the Penal Code entitled "Law Enforcement Agency Regulations."

Beginning January 1, 2020, requires every local law enforcement agency and the Commission on Peace Officer Standards and Training (POST) to "conspicuously post" on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act (Gov't Code 6250–6276.48).

[*Note*: In 2017, the Governor vetoed an almost identical bill (SB 345), writing that it was too broad in scope and vaguely drafted, and calling for a more targeted and precise approach. This year's bill, SB 978, is identical regarding what is required to be posted on an Internet Web site. The difference is that this year's bill does *not* include these state agencies: the Dep't of Alcoholic Beverage Control, CHP, CDCR, the Dep't of Fish and Wildlife, and DOJ.]

P.C. 13752
P.C. 13753
(New)
(Ch. 802) (AB 998)
(Effective 1/1/2019)

Provides for the creation of both domestic violence (new P.C. 13752) and human trafficking (new P.C. 13753) multidisciplinary personnel teams to collaborate and support survivors of domestic violence and human trafficking. Both new sections are worded identically, except for the use of "domestic violence" in P.C. 13752 and "human trafficking" in P.C. 13753.

Both authorize a county, city, or community-based non-profit organization to establish a domestic violence multi-disciplinary personnel team and/or a human trafficking multidisciplinary personnel team consisting of two or more persons trained in the prevention, identification, management, or treatment of domestic violence or human trafficking cases and who are qualified to provide a broad range of services.

Provides that multidisciplinary teams may include law enforcement personnel, medical personnel, psychiatrists, psychologists, therapists, sexual assault and domestic violence counselors, district attorneys, city attorneys, social service agency members, child welfare agency social workers, civil legal service providers, etc. Provides that team members may share confidential information with one another. Provides that discussions and writings are confidential and that testimony concerning discussions is not admissible in any criminal, civil, or juvenile court "unless required by law."

This bill also changes the heading of Title 5.3 in Part 4 of the Penal Code *from* "Family Justice Centers" *to* "Family Justice Centers and Multidisciplinary Teams." It groups the existing statutes in this Title (P.C. 13750 and 13751) into Chapter One entitled "Family Justice Centers" and puts new P.C. 13752 and new P.C. 13753 in Chapter Two entitled "Multidisciplinary Teams."

P.C. 13899
P.C. 13899.1
(New)
(Ch. 803) (AB 1065)
(Effective 1/1/2019)

Creates new Chapter 13 in Title 6 of Part 4 of the Penal Code entitled "Retail Theft Prevention Program."

Requires CHP, in coordination with DOJ, to convene a regional property crimes task force to assist local law enforcement in counties identified by CHP as having elevated levels of property crimes, including, but not limited to, organized retail theft and vehicle burglary. Requires the

continued

task force to provide local law enforcement in the identified region with logistical support and equipment, as determined by CHP in consultation with task force members.

See new P.C. 490.4, above, for more information about organized retail theft.

Provides that this new section will sunset on January 1, 2021.

P.C. 16150
(Amended)
(Ch. 780) (SB 746)
(Effective 7/1/2020)

Provides that beginning July 1, 2020, the definition of "ammunition" for purposes of P.C. 30305 and 30306 includes an ammunition feeding device. The existing definition already includes a bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. (P.C. 30305 is the felony crime of a person prohibited from owning or possessing a firearm, owning, possessing, or controlling ammunition or reloaded ammunition. P.C. 30306(a) is the misdemeanor crime of selling, delivering, or giving ammunition to a person the offender should reasonably know is prohibited from possessing ammunition. P.C. 30306(b) is the misdemeanor crime of selling, delivering, or giving ammunition to a person the offender knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a prohibited person.)

[This bill amends Proposition 63, the Safety for All Act of 2016 that was enacted by the voters in November 2016. Its provisions permit amendment by a 55% majority of each house of the Legislature if the amendments are consistent with and further the intent of this Act. This bill got well over 55% of the vote in each house (33 yes votes in the Senate and 59 yes votes in the Assembly.)]

P.C. 16690
(Amended)
(Ch. 63) (AB 1192)
(Effective 1/1/2019)

Expands this section, which permits an honorably retired peace officer to carry a concealed and loaded firearm in public, to permit a retired peace officer to possess a large-capacity magazine. (This amendment is consistent with existing P.C. 32406, both the Legislature's version and Proposition 63's version, which already permit honorably retired peace officers to possess large-capacity magazines.)

continued

Adds to this section retired Level I reserve officers who meet the requirements of P.C. 26300(c)(2) (carried a firearm while on duty and served as a reserve officer for the time period specified in the particular agency's policy) so that a retired Level I reserve officer is permitted to possess a large-capacity magazine.

(Existing P.C. 26300(c)(2) already permits a retired Level I reserve officer to carry a concealed and loaded firearm in public.)

Continues to provide that "honorably retired" does *not* include an officer who has agreed to a service retirement in lieu of termination.

P.C. 16930
(Amended)
(Ch. 795) (SB 1346)
(Effective 1/1/2019)

Changes the definition of "multiburst trigger activator" by:

1. Adding that it is a device designed or redesigned to be *built into* or *used in conjunction with* a semiautomatic firearm, that allows the semiautomatic firearm to discharge two or more shots in a burst. Previously, this sentence was worded only in terms of a device *attached to* a semiautomatic firearm. Now all three phrases are specified.
2. Adding that it is a manual or power-driven trigger activating device constructed and designed so that when *built into* or *used in conjunction with* a semiautomatic firearm it increases the rate of fire of that firearm. Previously this sentence was worded only in terms of a device *attached to* a semiautomatic firearm. Now all three phrases are specified.
3. Adding that a multiburst trigger activator includes, but is not limited, any of the following devices:

   (a) A device that uses a spring, piston, or similar mechanism to push back against the recoil of a firearm, thereby moving the firearm in a back-and-forth motion and facilitating the rapid reset and activation of the trigger by a stationary finger. These devices are commonly known as bump stocks, bump fire stocks, or bump fire stock attachments.
   (b) A device placed within the trigger guard of a firearm that uses a spring to push back against the recoil of the firearm causing the finger in the trigger guard to

continued

move back and forth and rapidly activate the trigger. These devices are commonly known as burst triggers.

(c) A mechanical device that activates the trigger of the firearm in rapid succession by turning a crank. These devices are commonly known as trigger cranks, gat cranks, gat triggers, or trigger actuators.

(d) Any after-market trigger or trigger system that, if installed, allows more than one round to be fired with a single depression of the trigger.

[Existing P.C. 32900 remains the felony/misdemeanor crime of possessing, giving, lending, manufacturing, importing, or offering for sale, a multiburst trigger activator.]

[The legislative history of this bill provides that it is a "clarification" of the definition of a multiburst trigger activator.]

P.C. 18100
P.C. 18105
P.C. 18120
(Amended)
P.C. 18121
(New)
P.C. 18125
P.C. 18135
(Amended)
P.C. 18148
(New)
P.C. 18160
P.C. 18180
(Amended)
(Ch. 898) (SB 1200)
(Effective 1/1/2019)

Provides that the term "ammunition" as it pertains to a gun violence restraining order includes a magazine as defined in P.C. 16890 (which defines "magazine" as an ammunition feeding device.) Existing P.C. 18100 defines a gun violence restraining order (GVRO) as a court order prohibiting a person from owning, possessing, purchasing, receiving, or having the control or custody of a firearm or ammunition. This bill makes it clear that magazines are included.

Requires a GVRO to note that the person is required to surrender "all firearms, ammunition, and magazines," and may not own, possess, purchase, receive, etc., "any firearm, ammunition, or magazine" while the order is in effect.

New subdivision (e) in P.C. 18120 requires the court, within one business day of receiving the prohibited person's receipt showing that all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer, to transmit a copy of the receipt to DOJ.

New P.C. 18121 provides that there is no filing fee for an application for a GVRO, a responsive pleading, an order to show cause, or a subpoena (so that an immediate family member who would like to seek a GVRO pursuant to existing P.C. 18150 or 18170 is not prevented from doing so due to a lack of funds.)

continued

Requires that when serving any GVRO, a law enforcement officer must verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.

New P.C. 18148 provides that a hearing must be held within 21 days of the date of a temporary GVRO, to determine whether a one-year GVRO should be issued after notice and hearing. This is consistent with existing P.C. 18125 which authorizes a court to issue an ex parte temporary GVRO at the request of a law enforcement officer and provides that a temporary order is valid for 21 days. There is already a requirement for a hearing within 21 days (in existing P.C. 18165) after an ex parte GVRO is issued at the request of an immediate family member.

[See P.C. 18140 and 18145, below, for additional gun violence restraining order amendments made by a different bill.]

P.C. 18140
P.C. 18145
(Amended)
(Ch. 873) (AB 2526)
(Effective 1/1/2019)

Clarifies that a law enforcement officer may orally request a temporary emergency gun violence restraining order (GVRO) and then sign a declaration under penalty of perjury, reciting the oral statements provided to the judicial officer (which is later filed with the court).

Permits a judicial officer to orally issue such an order.

Continues to permit a GVRO to be obtained in writing, if time and circumstances permit.

Obtaining and issuing an emergency GVRO orally is now the default method, with the written method permitted if time and circumstances allow. According to the legislative history of this bill, these amendments reflect the reality of how most of these orders are issued: The request is generally made over the phone by an officer in the field dealing with a situation in which someone poses an immediate and present danger.

[See P.C. 18100–18180, above, for additional GVRO amendments made by a different bill.]

P.C. 18255
(Amended)
(Ch. 185) (AB 2176)
(Effective 1/1/2019)

Adds additional information to the receipt that an officer is required to provide when taking custody of a firearm or deadly weapon at the scene of a domestic violence incident, or when serving a domestic violence protective order or a gun violence restraining order. In addition to describing the weapon, listing the serial number, and providing information about where and when the weapon may be recovered, the receipt must now include the name and residential mailing address of the owner or person who possessed the firearm or deadly weapon. [Law enforcement will then have the correct mailing address for sending any notices, such as a notice of forfeiture.]

P.C. 20155
(Amended)
(Ch. 185) (AB 2176)
(Effective 1/1/2019)

Clarifies that federal definitions apply to this misdemeanor crime of manufacturing, importing or distributing a toy, look-alike, or imitation firearm in violation of federal law governing the marking of a toy, look-alike, or imitation firearm, by providing that the definition of "imitation firearm" in existing P.C. 16700 does *not* apply to this section.

[According to the legislative history of this bill, federal law (15 U.S.C. 5001(c)) defines "look-alike firearm" but not "imitation firearm," and California defines "imitation firearm" (in P.C. 16700) but not "look-alike firearm." The definition of "look-alike firearm" in 15 U.S.C. 5001(c) does not include BB guns but California's definition of "imitation firearm" in P.C. 16700 does include BB devices.]

P.C. 22295
(Amended)
(Ch. 20) (AB 2349)
(Effective 1/1/2019)

Adds humane officers to those officers (animal control officers and illegal dumping enforcement officers) who are *not* prohibited from carrying a wooden club or baton if they complete a course of instruction certified by the Commission on Peace Officer Standards and Training (POST) in the carrying and use of the club or baton. Defines "humane officer" in terms of existing Corporations C. 14502(h), which provides that Level 1 and Level 2 humane officers are not peace officers, but may exercise the powers of a peace officer in order to prevent cruelty to an animal, and may summon aid from any bystander, use reasonable force to prevent cruelty to an animal, and make arrests for any law violations relating to animals.

[This bill also amends Corporations C. 14502 to provide that a humane officer may carry a wooden club or baton if he or

continued

she completes the POST course described above and if his or her employer authorizes the carrying.]

P.C. 22815
(Amended)
(Ch. 185) (AB 2176)
(Effective 1/1/2019)

Expands civil liability for a minor's non-self-defense use of tear gas to the person, parent, or guardian who accompanied the minor to purchase the tear gas. (Existing P.C. 22815(b) permits the sale of tear gas to a minor age 16 or older who is accompanied by a parent or guardian or who presents a statement of consent signed by the minor's parent or guardian.) Previously, only the person, parent, or guardian who signed the statement of consent was civilly liable for the minor's misuse of tear gas. Now, the person, parent, or guardian who accompanied the minor to purchase tear gas is also liable.

P.C. 25140
(Amended)
(Ch. 94) (SB 1382)
(Effective 1/1/2019)

Adds another option for where a handgun may legally be left in an unattended vehicle: locked in a locked toolbox or utility box. Defines "locked toolbox or utility box" to mean a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not contain a trunk, and is locked by a padlock, keylock, combination lock, or other similar lock device.

P.C. 25140 is the infraction crime of unlawfully leaving a handgun in an unattended vehicle and is punishable by a fine of up to $1,000. The purpose of this amendment is to provide pickup drivers and drivers of vehicles without trunks a viable option for storing a handgun in a place that is not accessible from the passenger compartment.

P.C. 26165
(Amended)
(Ch. 752) (AB 2103)
(Effective 1/1/2019)

Makes changes to the required course of training in order for a person to be issued a license by a sheriff (P.C. 26150) or a police chief (P.C. 26155) to carry a concealed firearm. Adds that the course of training must be a minimum of eight hours and is not required to exceed 16 hours. Previously, there was no minimum number of training hours and the maximum permitted number of training hours was 16. Adds both firearm handling and shooting technique to the types of required instruction (firearm safety and firearm laws.) Applicants for a concealed carry permit must demonstrate safe handling of, and shooting proficiency with, each firearm for which the applicant is applying to be licensed to carry. Requires a licensing authority to make available to the public

continued

the standards it uses for the live-fire shooting exercises, including the the minimum number of rounds to be fired and the minimum passing scores from specified firing distances.

Adds the above new requirements for license *renewal* applicants as well, but keeps the minimum number of hours for license renewal training at four hours.

[The legislative history of this bill indicates that some licensing authorities have already adopted these kinds of provisions in their local policies. The purpose of this bill is to have a statewide standard.]

P.C. 27510
(Amended)
(Ch. 894) (SB 1100)
(Effective 1/1/2019)

Prohibits a licensed firearms dealer from selling, supplying, delivering, or giving possession or control of a firearm to any person under age 21. Previously, this prohibition applied to handguns with respect to anyone under age 21, and to any type of gun (e.g., long guns) with respect to anyone under age 18, so that a firearms dealer could legally sell a long gun, such as a shotgun or rifle, to a 18-, 19-, or 20-year-old. Now a licensed firearms dealer cannot legally sell or supply any type of firearm to a person under age 21 unless a specified exception is met.

Sets forth several exceptions, by providing that a licensed firearms dealer may sell, supply, deliver, etc., a *non*-handgun (i.e., a long gun) to an adult age 18 or older who:

1. has a valid hunting license issued by the Dep't of Fish and Wildlife; or
2. is an active peace officer, federal agent, law enforcement agent, or reserve peace officer, who is authorized to carry a firearm in the course of his or her employment; or
3. is a person who provides proper identification of active membership in, or honorable discharge from, the U.S. Armed Forces, the National Guard, the Air National Guard, or reserve components.

[This bill also amends P.C. 29182. See below.]

P.C. 29180
(Amended)
(Ch. 780) (SB 746)
(Effective 1/1/2019)

Authorizes law enforcement to destroy a confiscated firearm that does not bear an engraved serial number or mark of identification obtained from DOJ.

Requires a new California resident to apply to DOJ for a unique serial number or other identification mark within 60 days of arriving in California, for any firearm the new resident wishes to possess in California that does not have a serial number or identification mark, whether or not the new resident manufactured or assembled the firearm himself or herself.

[P.C. 29180 requires a person who wishes to manufacture or assemble a firearm to apply to DOJ for a unique serial number or identification mark.]

P.C. 29182
(Amended)
(Ch. 780) (SB 746)
(Effective 1/1/2019)

and

(Amended)
(Ch. 894) (SB 1100)
(Effective 1/1/2019)

Permits DOJ to grant an application to an 18-, 19-, or 20-year old for a serial number for a *non*-handgun that the person wishes to manufacture or assemble, if the application is made before February 1, 2019. This conforms to the minimum age amendment to P.C. 27510 that prohibits a licensed firearms dealer from selling or supplying any firearm, including a long gun, to a person under age 21. See P.C. 27510, above. Persons age 18, 19, or 20 now have a short grace period to get in their requests to manufacture or assemble a long gun.

Adds that the chapter pertaining to a person manufacturing or assembling a firearm (P.C. 29180–29184) does not authorize a person, on or after July 1, 2018, to manufacture or assemble an unsafe handgun as defined in P.C. 31910.

P.C. 29581
(Renumbered to P.C. 29851)
(Ch. 92) (SB 1289)
(Effective 1/1/2019)

Renumbers this section to P.C. 29851 to put it in the same chapter as the code sections to which it applies. Continues to provide that P.C. 29800 (convicted felon in possession of a firearm or person with an outstanding felony warrant in possession of a firearm) and P.C. 29805 (specified convicted misdemeanant in possession of a firearm or person with an outstanding specified misdemeanor warrant in possession of a firearm) do not apply to a person who has an outstanding warrant if the person does not have knowledge of the warrant.

P.C. 29805
(Amended)
(Ch. 883) (AB 3129)
(Effective 1/1/2019)

Provides that anyone convicted, on or after January 1, 2019, of a misdemeanor violation of P.C. 273.5 (domestic violence), is subject to a lifetime firearm prohibition instead of a 10-year prohibition, and makes a violation of the prohibition a felony wobbler. Note that it is the conviction date that triggers the lifetime ban, not the commission date. Thus, a defendant who committed a misdemeanor violation of P.C. 273.5 in 2018 or years before, who is not convicted until 2019, may never own, purchase, receive, possess, or control, any firearm.

Subdivision (b) is the new felony crime of a person who is convicted, on or after January 1, 2019, of a misdemeanor violation of P.C. 273.5, owning, purchasing, receiving, possessing, or controlling a firearm. The crime is a felony wobbler, punishable by 16 months, two years, or three years in state prison, or, by up to one year in jail. (This is the same punishment that is provided in subdivision (a), which applies to a defendant convicted of any one of a number of specified misdemeanors who, within 10 years of the conviction, or if he or she has an outstanding warrant, owns, purchases, receives, possesses, or controls, a firearm.)

P.C. 29805(a), the 10-year ban on firearms, continues to apply to any misdemeanor conviction of P.C. 273.5 suffered before 2019 and to the numerous misdemeanors already specified in subdivision (a).

A person convicted of a felony violation of P.C. 273.5 in any year is still subject to P.C. 29800, which is the non-alternative felony crime of owning, purchasing, receiving, possessing, or controlling a firearm and remains punishable by 16 months, two years, or three years in state prison.

[There should not be any ex post facto issue with charging new P.C. 29805(b) based on a P.C. 273.5 misdemeanor *committed* before 2019, because the firearm conduct being punished will occur in 2019 or later, and thus does not pre-date P.C. 29805(b)'s effective date of January 1, 2019. In *People v. Mesce* (1997) 52 Cal.App.4th 618, 623, the court found that the defendant's conviction for former P.C. 12021(c) (now P.C. 29805) did not violate ex post facto principles because the firearm conduct being punished occurred after P.C. 12021(c)'s effective date. The court found that P.C. 12021(c) may be applied to defendants who committed a qualifying offense (e.g., a specified misdemeanor) prior to P.C. 12021(c)'s enactment.]

continued

[Note that because the crime of illegal possession of ammunition (P.C. 30305) is based on an offender's firearms prohibition status, a misdemeanor conviction for P.C. 273.5 subjects an offender to a lifetime ban on both firearms and ammunition.]

P.C. 29830
(Amended)
(Ch. 780) (SB 746)
(Effective 1/1/2019)

Permits a person who is prohibited from owning or possessing ammunition pursuant to any law, to transfer his or her ammunition to a licensed ammunition vendor instead of a licensed firearms dealer, for storage during the duration of the prohibition. Previously, this section permitted a person who is prohibited from owning or possessing a firearm or ammunition pursuant to any law to transfer a firearm and/or ammunition to a licensed firearms dealer. Now ammunition may be transferred to a licensed ammunition vendor.

Beginning July 1, 2020, this section will also apply to ammunition feeding devices and will permit a person who is prohibited from owning or possessing an ammunition feeding device to transfer the device to a licensed firearms dealer or to an ammunition vendor or storage during the duration of the prohibition.

[This bill also amends P.C. 16150, beginning July 1, 2020, to provide that the definition of "ammunition" for purposes of P.C. 30305 and 30306 includes an ammunition feeding device. The existing definition already includes a bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. (P.C. 30305 is the felony crime of a person prohibited from owning or possessing a firearm, owning, possessing, or controlling ammunition or reloaded ammunition. P.C. 30306(a) is the misdemeanor crime of selling, delivering, or giving ammunition to a person the offender should reasonably know is prohibited from possessing ammunition. P.C. 30306(b) is the misdemeanor crime of selling, delivering, or giving ammunition to a person the offender knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a prohibited person.)]

P.C. 29851
(Renumbered from P.C. 29581)
(Ch. 92) (SB 1289)
(Effective 1/1/2019)

Renumbers this section from P.C. 29581 to 29851 to put it in the same chapter as the code sections to which it applies. Continues to provide that P.C. 29800 (convicted felon in possession of a firearm or person with an outstanding felony warrant in possession of a firearm) and P.C. 29805 (specified convicted misdemeanant in possession of a firearm or person with an outstanding specified misdemeanor warrant in possession of a firearm) do not apply to a person who has an outstanding warrant if the person does not have knowledge of the warrant.

P.C. 32000
(Amended)
(Ch. 56) (AB 1872)
(Effective 1/1/2019)

Adds a harbor or port district that employs peace officers, the San Diego Unified Port District Harbor Police, and the Harbor Dep't of the City of Los Angeles to the list of law enforcement departments and other entities that are exempt, and whose sworn members are exempt, from laws relating to the sale or purchase of an unsafe handgun if the sworn member has satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST).

[P.C. 32000(a) is the misdemeanor crime of manufacturing, importing for sale, keeping for sale, offering for sale, giving, or lending an unsafe handgun. P.C. 32000(b)(6) specifies the entities/sworn members that are authorized to purchase unsafe handguns. P.C. 32000(c)(2)(A) continues to require that a person who obtains an unsafe handgun pursuant to subdivision (b)(6) must secure the handgun in a specified way when leaving it in an unattended vehicle.]

P.C. 33850
P.C. 33855
P.C. 33860
P.C. 33865
P.C. 33870
P.C. 33875
P.C. 33880
P.C. 33885
P.C. 33895
(Amended)
(Ch. 780) (SB 746)
(Effective 1/1/2019)

and

P.C. 33855
(Amended)
(Ch. 864) (AB 2222)
(Effective 1/1/2019)

Makes a number of changes to this chapter that is entitled "Return or Transfer of Firearm in Custody or Control of Court or Law Enforcement Agency" in order to make it applicable to ammunition, and, beginning July 1, 2020, to ammunition feeding devices.

P.C. 33850
Provides that a person who wishes to have returned a firearm that is in the custody or control of a court or law enforcement agency must submit an application electronically via the California Firearms Application Reporting System (CFARS).

Permits a person who owns a firearm in the custody or control of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm, to sell or transfer the firearm to a third party who is not prohibited from possessing the firearm. Sale or transfer to a licensed firearms dealer is still an option.

Permits a person who owns ammunition in the custody or control of a court or law enforcement agency and who does not wish to obtain possession of the ammunition, and the ammunition is otherwise legal, to sell or transfer the ammunition to a licensed firearms dealer, a licensed ammunition vendor, or a third party who is not prohibited from possessing the ammunition.

Provides that beginning July 1, 2020, ammunition feeding devices are added to P.C. 33850, so that it will apply to firearms, ammunition, and ammunition feeding devices. (This bill amends P.C. 16150 as of July 1, 2020, to add ammunition feeding devices to the definition of "ammunition." See P.C. 16150, above.)

Other sections pertaining to the process of returning a firearm (P.C. 33855, 33860, 33865, 33875, 33885, and 33895) are amended to add both ammunition and ammunition feeding devices as of July 1, 2020.

P.C. 33870 is amended to add ammunition as of January 1, 2019, and ammunition feeding devices as of July 1, 2020.

P.C. 33880 already applies to ammunition and is amended to add ammunition feeding devices as of July 1, 2020.

Public Resources Code

Pub. Res. C. 42270
Pub. Res. C. 42271
(New)
(Ch. 576) (AB 1884)
(Effective 1/1/2019)

Creates new Chapter 5.2 in Part 3 of Division 30 of the Public Resources Code entitled "Single-Use Plastic Straws."

New Pub. Res. C. 42271 prohibits a full-service restaurant from providing a single-use plastic straw to a consumer unless the consumer requests it. A first and second violation will result in a notice of violation (with no penalty, apparently), and a third or subsequent violation is an infraction punishable by a fine of $25 for each day the restaurant is in violation, up to no more than $300 annually. Provides that an "enforcement officer" shall enforce this new straw law.

New Pub. Res. C. 42270 contains definitions of "consumer," "enforcement officer," "single-use plastic straw," and "full-service restaurant." An "enforcement officer is defined in terms of existing H&S 113774 (a director, agent, or environmental health specialist appointed by the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.)

A "full-service restaurant" is defined as an establishment whose primary business is serving food, where the consumer's order is taken after the consumer has been seated, where food and beverages are delivered directly to the consumer, and where the check is delivered directly to the consumer at the assigned seating area.

Provides that a city or county may adopt and implement an ordinance that would further restrict a full-service restaurant from providing a single-use plastic straw to a consumer.

Public Utilities Code

P.U.C. 5445.1
(New)
(Ch. 286) (AB 2986)
(Effective 1/1/2019)

Requires a transportation network company (e.g., Lyft, Uber) to provide all of the following information to a passenger on its online-enabled application or platform at the time the passenger is matched with a company driver:

1. the driver's first name and picture;
2. an image of the make and model of the driver's vehicle; and
3. the license plate number of the driver's vehicle.

[According to the legislative history, this bill is a codification of regulations already promulgated by the Public Utilities Commission.]

P.U.C. 5445.3
(New)
(Ch. 511) (SB 1080)
(Effective 1/1/2019)

Requires a driver for a transportation network company (e.g., Lyft, Uber) to possess either a valid California driver's license, or, in the case of a non-resident active duty military member or a non-resident dependent of an active duty military member, a valid driver's license issued by the state or territory of the U.S. where the member is a resident. Requires a transportation network company (TNC) to obtain and review the driving history from the other state or territory. Requires TNCs to notify all participating drivers of the California Vehicle Code's provisions, such as provisions relating to hands-free electronic devices, the Three Feet for Safety Act to provide space between vehicles and bicyclists, and rules relating to school buses.

[According to the legislative history of this bill, its purpose is to permit active duty military and dependents to be able to make money as a ride-share driver without having to go through the inconvenience and expense of replacing a valid, out-of-state license before being legally eligible to work as a ride-share driver.]

Unemployment Insurance Code

Unempl. Ins. C. 14040
Unempl. Ins. C. 14041
Unempl. Ins. C. 14042
(New)
(Ch. 53) (SB 866)
(Effective *6/27/2018*)

Adds a new Article 4 in Chapter 3 of Division 7 of the Unemployment Insurance Code entitled "Prison to Employment Program."

Requires the California Workforce Development Board to administer a prison-to-employment program and award grants for the purpose of developing regional partnerships and regional plans to provide and coordinate the necessary workforce, education, and supportive services needed by formerly incarcerated individuals and individuals under supervision (parole, probation, mandatory supervision, post-release community supervision) so they can secure and retain employment and reduce the chances of recidivism.

.

Vehicle Code

V.C. 1656.3
(Amended)
(Ch. 723) (AB 2918)
(Effective 1/1/2019)

Requires DMV to include in the California Driver's Handbook, information about a person's civil rights during a traffic stop. Requires that the information address the extent and limitations of a peace officer's authority during a traffic stop and the legal rights of drivers and passengers, including the right to file complaints against a peace officer. Requires that this information be developed by the civil rights section of DOJ in consultation with DMV, CHP, the Commission on Peace Officer Standards and Training (POST), civil rights organizations, and community-based organizations.

V.C. 12800
(Repealed & Added)
(Ch. 853) (SB 179)
(2017 Legislation With a Delayed Operative Date of 1/1/2019)

Provides that an applicant for an original or renewed driver's license shall choose one of three gender categories: female, male, or non-binary. Prohibits DMV from requiring documentation of any gender category and requires DMV to accept an applicant's self-certification of their chosen gender category.

V.C. 12800.7
V.C. 12801.9
(Amended)
(Ch. 885) (SB 244)
(Effective 1/1/2019)

Changes the way that law enforcement may obtain documents that are provided to DMV for the purpose of proving identity or legal presence in the United States, when a person is applying for or renewing a driver's license (V.C. 12800.7). Previously, a law enforcement agency could simply request these documents as part of an investigation. Now DMV is prohibited from disclosing them except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

Amends V.C. 12801.9 (which permits a person who is not legally present in the U.S. to obtain a California driver's license if California residency is proved) to add the same restrictions. New subdivision (k) provides that documents provided by an applicant to prove identity or California residency cannot be disclosed by DMV except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific

continued

circumstances that do not permit authorities time to obtain a court order. Adds that it is a violation of Gov't Code 11135 to notify a law enforcement agency of the identity of a person who holds or presents a V.C. 12801.9 license or that he or she carries such a license, if notification is not required by law or would not have been provided if the individual held a V.C. 12801 license. [Gov't Code 11135 prohibits any person in California, on the basis of race, color, sex, religion, national origin, ethnicity, etc., from being unlawfully denied full and equal access to the benefits of any program conducted or administered by the state or a state agency.]

[According to the legislative history of this bill, its purpose is to protect persons who are illegally present in California. The California State Sheriffs Association (CSSA) opposed the bill because it limits law enforcement access to government records and impedes criminal investigations. CSSA pointed out that, in general, a court case must be pending in order to obtain a subpoena and that one of the grounds specified in P.C. 1524 must be demonstrated in order to obtain a search warrant.]

V.C. 13202.7
(Repealed)
(Ch. 717) (AB 2685)
(Effective 1/1/2019)

Repeals this section that had permitted a court to suspend for one year, or delay for one year, the driving privilege of a minor age 13 to 17 who is found to be a habitual truant pursuant to Education C. 48262, or who is adjudged a ward of the court pursuant to W&I 601(b) (four or more truancies in one school year, or the minor fails to respond to the directives of a school attendance review board or probation officer).

Uncodified Section Two of this bill provides that any court order to suspend, restrict, or delay a minor's driving privilege issued *before* January 1, 2019, "shall remain in full effect in accordance with the terms of the order." Thus, the repeal of V.C. 13202.7 is prospective only, and is *not* retroactive. The repeal prohibits a court, starting January 1, 2019, from issuing a driver's license suspension or delay pursuant to V.C. 13202.7, but does not affect any license suspensions or delays that were ordered before January 1, 2019.

[The legislative history of the bill sets forth the proponents' argument that license suspension for truants disproportionately impacts lower income families who

continued

rely on the truant student's economic earnings to pay for household expenses. However, the legislative history contains no indication of how many truant students whose licenses were suspended actually had jobs and contributed money to their households. Repealed V.C. 13202.7 was a permissive, rather than mandatory, license suspension/delay, and, it contained a provision in subdivision (c) that required the court to consider whether a minor needed to maintain a driver's license for family, employment, or medical purposes.]

V.C. 21200
(Amended)
(Ch. 139) (AB 1755)
(Effective 1/1/2019)

Adds that a person operating a bicycle on a Class I bikeway is subject to the provisions in V.C. 20001 (hit-and-run causing injury) that are applicable to drivers of vehicles, "except those provisions which by their very nature can have no application."

Streets and Highways Code 890.4 defines "Class I bikeway" as a bike path or shared-use path that provides a completely separated right-of-way for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized.

[According to the legislative history of this bill, it was motivated by an incident in Sacramento County where a runner was hospitalized with serious injuries after being hit by a bicyclist on a bike trail. The bicyclist fled the scene, and did not report the accident or render aid. Existing V.C. 21200(a) subjects a bicyclist *on a highway* to a number of laws that apply to drivers of vehicles (such as driving under the influence, hit-and-run, and hit-and-run with injury). New subdivision (a)(2) now makes V.C. 20001 applicable to bicyclists operating on a Class I bikeway. This means that a bicyclist on a bike path/bike trail who is involved in an accident that results in injury or death to another person must stop at the scene, provide specified information, and render reasonable assistance, as required by V.C. 20003 and 20004.]

V.C. 21212
(Amended)
(Ch. 502) (AB 3077)
(Effective 1/1/2019)

Permits a person under age 18 who is cited for not wearing a bicycle helmet while riding a bicycle, non-motorized scooter, skateboard, or roller skates to correct the violation if the parent or legal guardian delivers proof to the issuing agency within 120 days that the minor has a qualifying helmet and

continued

has completed a bicycle safety course, if one is available, as prescribed by authorities in the local jurisdiction.

Continues to provide that the first helmet charge against a person must be dismissed when the person alleges under oath that it is his or her first helmet charge (unless it is established in court that it is not the first charge). Continues to provide that a helmet violation is in infraction punishable by a $25 fine.

This bill also makes conforming amendments to V.C. 40303.5. See below.

[According to the legislative history, the proponents of the bill state that police may be reluctant to issue citations for helmet violations because when penalties are added, the fine may be as much as $300. The proponents believe that permitting a helmet violation to be corrected (i.e., making it a "fix-it" ticket) will renew "collaborative efforts" to increase helmet use.]

V.C. 21235
(Amended)
(Ch. 552) (AB 2989)
(Effective 1/1/2019)

Eliminates the requirement that an adult wear a bicycle helmet when operating a motorized scooter. Now only persons under age 18 are required to wear helmets.

Permits a local authority to authorize the operation of a motorized scooter outside of a bicycle lane on a street with a speed limit of up to 35 mph. Provides that regardless of the speed limit on a particular highway, the maximum speed limit for a motorized scooter is 15 mph. Previously, a motorized scooter could not be operated on a street with a posted speed limit over 25 mph unless in a bike lane.

[According to the legislative history of this bill, its purpose is to make it easier for people to use stand-up motorized "dockless scooters" by not requiring adults to wear helmets and to increase usage by permitting their operation on streets with speed limits up to 35 mph. There are a number of companies that provide motorized scooters in various cities that can be activated and paid for using a smart phone app The user can leave the scooter wherever his or her trip ends.]

V.C. 21761
(New)
(Ch. 710) (AB 2115)
(Effective 1/1/2020)

Requires a driver approaching and overtaking a stopped waste service vehicle, to make a lane change into an available lane adjacent to the waste service vehicle and pass at a safe distance, or, if a lane change is unsafe or not practical, requires a driver to slow down to a reasonable and prudent speed. Provides that these requirements apply only when the waste service vehicle is readily identifiable and is flashing amber lights. Defines a waste service vehicle as a refuse, recyclables, or yard waste collection vehicle. Has a delayed effective date of January 1, 2020.

[This new section is modeled after existing V.C. 21809, which requires a lane change or slowing down when passing a stationary emergency vehicle or tow truck that is flashing amber warning lights. Existing V.C. 21760 (the "Three Feet for Safety Act") provides requirements for the safe passing and overtaking of bicyclists.]

[Since no punishment is provided in this new section, a violation is an infraction pursuant to existing V.C. 40000.1, which provides that a violation of, or failure to comply with, any provision of the Vehicle Code is an infraction, unless otherwise provided.]

V.C. 22524.5
(Amended)
(Ch. 434) (AB 2392)
(Effective 1/1/2019)

Requires all towing and storage fees related to a stolen vehicle or a vehicle that was in an accident, to be reasonable. Provides that a towing and storage charge shall be deemed reasonable if it does not exceed the fees and rates charged for similar services provided in response to requests initiated by a public agency, such as a local police department or the California Highway Patrol, or if it is comparable to rates and fees charged by other facilities in the same locale.

Provides that these rates and fees are presumptively **un**reasonable:

1. administrative or filing fees, except if related to DMV documentation or to the lien sale of a vehicle;
2. security fees;
3. dolly fees;
4. load and unload fees;
5. pull-out fees; and
6. gate fees, except when the owner or insurer of a vehicle requests that the vehicle be released outside of regular business hours.

continued

Provides that nothing in this list of presumptively unreasonable fees prohibits any fees authorized in an agreement between a law enforcement agency and a towing company, if the tow was initiated by the law enforcement agency.

V.C. 22650
(Amended)
(Ch. 592) (AB 2876)
(Effective 1/1/2019)

Adds that the removal of a vehicle is a seizure under the Fourth Amendment of the United States Constitution and Section 13 of Article I of the California Constitution. Provides that a removal based on community caretaking, including, but not limited to, the circumstances specified in V.C. 22651, is only reasonable "if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft of vandalism. "

This bill does not make any substantive change in the law. It simply codifies existing case law. Case law already provides even if the removal of a vehicle is authorized by statute, such as V.C. 22651, the impoundment must still serve a community caretaking function. Statutory authorization does not, in and of itself, determine the constitutional reasonableness of the seizure. See *People v. Williams* (2006) 145 Cal.App.4th 756, in which the police impounded an arrestee's car based on V.C. 22651(h)(1) (removal of vehicle when driver arrested) even though it was legally parked outside his residence and the defendant had a valid driver's license. *Williams* found that the removal of the vehicle was not constitutional because the prosecution did not establish that impounding it served any community caretaking function. A number of cases have distinguished *Williams* based on the particular facts of those cases.

[Existing V.C. 22651 specifies a number of situations in which law enforcement is permitted to remove a vehicle (e.g., vehicle is blocking traffic, vehicle is illegally parked so as to block a private driveway). The legislative history sets forth the bill proponents' position that constitutional protections are needed because "low-income and immigrant families are vulnerable to unwarranted vehicle seizures." Again, case law already recognizes that constitutional protections apply to the removal/impoundment of a vehicle.]

V.C. 22651
(Amended)
(Ch. 667) (AB 87)
(Effective 1/1/2019)

Adds to the list of circumstances for which a peace officer has the authority to remove a vehicle: a vehicle that is operating using autonomous technology without a valid permit to operate autonomously on public roads, either where a permit was not obtained, or where the registered owner or person in control of the vehicle has received notice that the permit has been suspended, terminated, or revoked.

Prohibits a peace officer from stopping an autonomous vehicle solely for the purpose of determining whether the vehicle is operating using autonomous technology without a valid permit.

Permits the release of a removed autonomous vehicle after the registered owner or person in control furnishes the storing law enforcement agency with proof of current registration, a valid driver's license, and either proof of a valid permit to operate the vehicle autonomously or a declaration or sworn statement to DMV that states the vehicle will not be operated using autonomous technology upon public roads without first obtaining a permit.

V.C. 22651.07
(Amended)
(Ch. 434) (AB 2392)
(Effective 1/1/2019)

Adds additional rights a vehicle owner, his or her agent, or a licensed repossessor has, before paying any vehicle towing, recovery, or storage fees:

1. the right to inspect the vehicle without paying a fee;
2. the right to have his or her insurer inspect the vehicle, at no charge, during normal business hours; and
3. the right to pay by an insurer's check (this section continues to permit payment by cash or by a valid bank credit card).

Continues to provide for these rights: the right to receive personal property, at no charge, during normal business hours; the right to retrieve the vehicle during the first 72 hours and not pay a lien fee; and the right to request a copy of a Towing and Storage Fees and Access Notice.

Requires a storage facility to be open and accessible during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.), to provide a telephone number that permits the caller to leave a message outside of normal business hours, and to return messages no later than six hours after they are left.

V.C. 23577
V.C. 23578
V.C. 23612
(Amended)
(Ch. 177) (AB 2717)
(Effective 1/1/2019)

Amends Vehicle Code sections pertaining to chemical tests in order to delete the criminal penalty for refusing to submit to a blood test and thereby bring them into conformity with the United States Supreme Court decision in *Birchfield v. North Dakota* (2016) 579 U.S. __, 136 S.Ct. 2160. (Administrative penalties are retained.) *Birchfield* held that the Fourth Amendment permits a warrantless breath test incident to an arrest for drunk driving, but that a search warrant is required for a blood test. *Birchfield* also found that the refusal to take a blood test cannot be criminalized by an implied consent law. The *Birchfield* court found that a breath test involves a negligible physical intrusion and can be justified as a search incident to arrest. But a blood test involves the piercing of the skin and results in a sample that can be preserved and from which it is possible to extract information beyond a simple blood alcohol content reading, and thus cannot be justified as a search incident to arrest.

Amends V.C. 23577, which provides for enhancement penalties for a defendant convicted of drunk driving who refuses to take or complete a chemical test pursuant to the implied consent law (V.C. 23612), to eliminate references to "chemical test" and replace them with "breath or urine test." Thus, the penalties in V.C. 23577 apply to the willful refusal or failure to complete a breath or urine test, but do not apply to refusing to take or failing to complete a blood test.

Adds that "The penalties in this section do not apply to a person who refused to submit to or complete a blood test pursuant to Section 23612. This section does not prohibit the imposition of administrative actions involving driving privileges."

Amends V.C. 23578 to change "chemical test" to "breath or urine test." [V.C. 23578 requires the court to consider a blood alcohol level of 0.15 percent or more, or the refusal to take a test, as a factor that may justify a higher sentence and/or as a factor in determining whether to grant probation.]

Amends subdivision (a)(1)(D) of V.C. 23612 (the implied consent law, which provides that a person who drives a motor vehicle is deemed to have given consent to a chemical test if lawfully arrested for drunk driving) to change "chemical testing" to "breath or urine testing," so that a driver is now required to be told that the failure to submit to, or complete, a breath or urine test will result in a fine and

continued

mandatory imprisonment if the person is convicted of drunk driving. (Blood tests are removed.) This part of V.C. 23612 is also amended to change the warning about driver's license suspensions if any of the three tests (blood, breath, urine) are refused or not completed: refusal or failure will result in the *administrative* suspension or revocation *by the Dep't of Motor Vehicles* of the privilege to drive. The various periods of suspension or revocation (one year, two years, three years) are not changed. Amends V.C. 23612(a)(2)(C) to change the standard upon which an officer may request an arrestee to submit to a blood test when the arrestee has chosen to submit to a breath test and the officer has reasonable cause to believe the arrestee was driving under the influence of a drug or the combined influence of alcohol and a drug: The arrestee may also be requested to submit to a blood test if the officer has reasonable cause to believe (instead of "a clear indication") that a blood test will reveal evidence of the arrestee being under the influence.

[Note that in the recent case of *People v. Gutierrez* (10/2/2018) 27 Cal.App.5th 1155 (petition for rehearing denied 10/29/2018, petition for review filed 11/13/2018), the court held that a warrant was not required to draw blood after a drunk driving arrest because the suspect was given a choice of a breath test or blood test and freely and voluntarily chose a blood test. The court found that because the defendant was given a choice, the blood draw was justified under the search-incident-to-arrest exception to the warrant requirement.]

V.C. 27316
(Amended)
(Ch. 206) (AB 1798)
(Effective 1/1/2019)

Requires that all schoolbuses in use in California be equipped with a passenger restraint system by July 1, 2035. [Existing law already requires schoolbuses manufactured after a specified date to be equipped with a combination lap/shoulder seatbelt. This bill will require all schoolbuses in use, regardless of the date of manufacture, to have passenger restraint systems by July 1, 2035.]

V.C. 40254
(Amended)
(Ch. 435) (AB 2535)
(Effective 1/1/2019)

Requires a notice of toll evasion violation for failure to meet occupancy requirements in a high-occupancy toll lane that is based on an automated detection system, to include a copy of the photographic evidence. Continues to require that the violation notice include the time of the violation, the location, the license plate number of the vehicle, an

continued

explanation of the procedures for contesting the violation, and, the registration expiration date of the vehicle and make of the vehicle, if practicable.

[The legislative history of this bill states that current automated device technology is about 95% accurate. Including a photograph will permit the vehicle owner to immediately see whether the violation occurred or provide the owner with the evidence to dispute it.]

V.C. 40280
V.C. 40281
V.C. 40282
V.C. 40283
V.C. 40284
V.C. 40285
V.C. 40286
V.C. 40287
V.C. 40288
(New)
(Ch. 45) (SB 847)
(Effective 6/27/2018)

Creates new Chapter 1.5 in Division 17 of the Vehicle Code entitled "Pilot Program for Online Adjudication of Infraction Violations."

Creates a pilot program for the online adjudication of Vehicle Code infractions for which a personal appearance is not required.

Requires the Judicial Council to develop an online tool for adjudicating Vehicle Code infraction violations and to select at least eight courts that are willing to participate in the pilot program.

Authorizes a pilot court to offer online trials, but any pilot court offering online trials must continue to make trials by written declaration available under existing V.C. 40902. Authorizes a pilot court to make ability-to-pay determinations through an online tool. Permits the court to waive or reduce the total amount due for an infraction, to permit installment payments, to allow a defendant to perform community service in lieu of paying, to suspend the total amount due in whole or in part, or to "offer an alternative disposition."

Provides that a defendant has the burden of establishing that he or she does not have the ability to pay. Requires a pilot court to consider factors such as whether a defendant receives public benefits and whether a defendant's monthly income is 125 percent or less of the current poverty guidelines. Requires the online tool to recommend a reduction of 50 percent or more of the total amount due for all defendants who receive CalFresh benefits (i.e., food stamps) or who have established an inability to pay. Provides that a court is not required to make express findings as to the factors bearing on the amount it orders

continued

the defendant to pay (e.g., when the amount a defendant is ordered to pay is less than that recommended), but a court **is** required to make express findings if it deviates from the online tool recommendation by ordering a defendant to pay an amount that is greater than the recommendation. Permits a pilot court to authorize the clerk of the court to make ability-to-pay determinations submitted online. Provides that a defendant has the right to request in writing, within 10 days, that an ability-to-pay determination made by the clerk of the court be reviewed by a judicial officer.

Requires the Judicial Council to provide reports to the Legislature on January 1, 2020, and January 1, 2021, about implementation of the pilot program, and to provide an evaluation of the pilot program by June 30, 2022.

V.C. 40303.5
(Amended)
(Ch. 502) (AB 3077)
(Effective 1/1/2019)

Adds a violation of V.C. 21212(a) (a person under age 18 failing to wear a helmet when riding a bicycle non-motorized scooter, skateboard, or roller skates), to the list of Vehicle Code violations (e.g., vehicle registration infractions; driver's license infractions; bicycle equipment violations; infraction violations involving vehicle equipment, towing, off-road vehicles, bicycle registration, and bicycle licensing) for which an arresting officer must permit a violator to sign a notice containing a promise to correct the violation (i.e., issue a "fix-it" ticket).

Continues to provide that an officer may issue a notice to appear instead of a promise to correct, if the officer finds any of the disqualifying conditions set forth in existing V.C. 40610(b) (e.g., evidence of fraud or persistent neglect, the violation presents an immediate safety hazard, the violator does not agree to correct the violation or cannot promptly correct it.)

This bill also makes conforming amendments to V.C. 21212, which now provides for this method of fixing a helmet violation committed by a minor: The parent or legal guardian delivers proof to the issuing agency within 120 days that the minor has a qualifying helmet and has completed a bicycle safety course, if one is available, as prescribed by authorities in the local jurisdiction.

[According to the legislative history, the proponents of the bill state that police may be reluctant to issue citations for

continued

helmet violations because when penalties are added, the fine may be as much as $300. The proponents believe that permitting a helmet violation to be corrected (i.e., making it a "fix-it" ticket) will renew "collaborative efforts" to increase helmet use.]

V.C. 40610
(Amended)
(Ch. 38) (AB 1824)
(Effective 6/27/2018)

Prohibits an officer from issuing a notice to correct (i.e., a "fix-it" ticket) for a violation involving the failure of a vehicle to have an adequate and properly maintained muffler (V.C. 27150(a)), or for a violation involving the modification of an exhaust system to increase the noise emitted (V.C. 27151(a)). Continues to prohibit fix-it tickets for violations that present an immediate safety hazard, when there is evidence of fraud or persistent neglect, or when the violator does not agree to, or cannot, promptly correct the violation.

Welfare and Institutions Code

(See the Juvenile Delinquency section for W&I changes that pertain to that subject.)

W&I 212.5
(Amended)
(Ch. 910) (AB 1930)
(Effective 1/1/2019)

Adds that the requirements for the electronic filing of documents in a juvenile court matter do not prohibit using electronic means to send information regarding the date, time, and place of a juvenile court hearing without complying with W&I 212.5, as long as it is done in a manner that preserves and ensures confidentiality of records by encryption.

W&I 362.05
(Amended)
(Ch. 997) (AB 2448)
(Effective 1/1/2019)

Adds access to computer technology and the Internet to the types of activities (age-appropriate extracurricular, enrichment, and social activities) that a dependent child of the juvenile court, a dependent child in foster care, or a dependent child in a short-term residential program or group home is entitled to participate in.

[According to the legislative history of this bill, its purpose is to help children stay in contact with friends and family and access educational materials for school.]

W&I 827
(Amended)
(Ch. 992) (AB 1617)
(Effective 1/1/2019)

Authorizes an individual who files a notice of appeal or petition for writ challenging a juvenile court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, to inspect and copy records in a juvenile case file for purposes of that appeal or writ proceeding, if the individual was previously granted access by the juvenile court pursuant to W&I 827(a)(1)(Q), which permits a juvenile court case file to be inspected by "[a]ny other person who may be designated by court order of the judge of the juvenile court upon filing a petition." This amendment applies to juvenile dependency court files.

[According to the legislative history, this bill was sponsored by the Judicial Council to cover situations where, for example, the appellant is a family member of a juvenile or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition, or who filed a petition pursuant to W&I 388 to change, modify, or set aside a juvenile court order on the grounds of changed circumstances or new evidence and is appealing the denial of that petition. If such a person was previously granted access to a juvenile court file, the court may re-release the records based on the previous order granting access.]

W&I 4361
(New)
(Ch. 34) (AB 1810)
(Effective 6/27/2018)

Creates new Chapter 6.5 in Part 3 of Division 4 of the Welfare and Institutions Code entitled "Diversion Funding for Individuals with Serious Mental Disorders."

Provides that subject to appropriation by the Legislature, the State Dep't of State Hospitals (DSH) may solicit proposals from, and may contract with, a county, in order to help fund the development or expansion of pre-trial mental disorder diversion for defendants who have the potential to be found incompetent to stand trial for felony charges or who have actually been found incompetent. (P.C. 1001.36 created pre-trial mental disorder diversion, effective June 27, 2018. See the Penal Code Section of this Digest for more information about P.C. 1001.36.)

W&I 5150
(Amended)
(Ch. 258) (AB 2099)
(Effective 1/1/2019)

Requires that a *copy* of the application that permits an individual to be involuntarily detained for mental health evaluation and treatment (a "5150 hold"), be treated as the original application. Existing W&I 5150(e) requires, when a person is detained involuntarily for mental health treatment, that a written application be submitted by a peace officer or mental health professional stating the circumstances under which the individual was called to the officer's or professional's attention and stating that the officer or professional has probable cause to believe that the individual is, as a result of a mental disorder, a danger to self or others, or is gravely disabled.

[According to the legislative history of this bill, mentally ill people are being turned away for treatment in the absence of original documentation detailing the W&I 5150 hold. This bill clarifies that a copy of the original application must be treated as the original application.]

W&I 5352
W&I 5352.5
(Amended)
(Ch. 458) (SB 931)
(Effective 1/1/2019)

Amends W&I 5352 to add the professional person in charge of providing mental health treatment at a county jail to the list of those persons (the person in charge of an agency providing comprehensive evaluation or the person in charge of a facility providing intensive treatment) who may recommend conservatorship for a person without the person being an inpatient in a treatment facility, if the person has been evaluated and determined to be gravely disabled.

continued

Amends W&I 5352.5 to add that the "custody status of a person who is subject to the conservatorship investigation shall not be the sole reason for not scheduling an investigation by the conservatorship investigator."

[According to the legislative history of this bill, Lanterman-Petris-Short (LPS) conservatorship evaluations are often delayed for county jail inmates because they are in custody and often are not evaluated for conservatorship until their criminal cases have concluded, or they are released from custody without a conservatorship evaluation. The purpose of these amendments is to have more timely conservatorship evaluations for county jail inmates and to make sure that an inmate's custody status is not the sole reason for not doing the conservatorship evaluation.]

W&I 5450
W&I 5451
W&I 5452
W&I 5453
W&I 5454
W&I 5455
W&I 5456
W&I 5457
W&I 5458
W&I 5459
W&I 5460
W&I 5461
W&I 5462
W&I 5463
W&I 5464
W&I 5465
W&I 5466
W&I 5555
W&I 5556
(New)
(Ch. 845) (SB 1045)
(Effective 1/1/2019)

Creates new Chapter 5 in Part 1 of Division 5 of the Welfare and Institutions Code (W&I 5450–5466) entitled the "Housing Conservatorship for Persons With Serious Mental Illness and Substance Use Disorders."

In the counties of Los Angeles, San Diego, and San Francisco, permits the board of supervisors to authorize a program to appoint a conservator for a person who is incapable of caring for his or her own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment pursuant to W&I 5150. Defines "frequent detention" as eight or more detentions for evaluation and treatment in the preceding 12 months. Tasks the board of supervisors with designating the agency or agencies that will provide conservatorship investigation.

Provides that a prospective conservatee has the right to a court or jury trial on the issue of whether he or she meets the criteria for the appointment of a conservator. Requires that the trial commence within 10 days of the date it is demanded, except that the trial may be continued for up to 15 days on the request of counsel for the proposed conservatee.

Provides that the purpose of this type of conservatorship is to provide the least restrictive and most clinically appropriate alternative method for the protection of the person. If the court determines that a conservatee needs to

continued

be removed from his or her residence, placement must be in supportive community housing that provides wraparound services, such as onsite physical and behavioral health services, unless the court, with good cause, determines that such a placement is not sufficient for the protection of the conservatee.

Authorizes the sheriff to recommend a conservatorship investigation for persons detained in jail.

Before any conservatorship pursuant to this new chapter may be established, it must first be shown that the behavioral health director of a county or city previously attempted to obtain a court order for assisted outpatient treatment pursuant to existing W&I 5345–5349.5, that the order was denied, and that assisted outpatient treatment would be insufficient to treat the person in lieu of a conservatorship. [W&I 5345–5349.5 is the Assisted Outpatient Treatment Demonstration Project Act of 2002 ("Laura's Law") and provides that a person may be ordered by the court to obtain outpatient treatment if the person is suffering from a mental illness, is unlikely to survive safely in the community without supervision, has a history of non-compliance with mental illness treatment, is substantially deteriorating, and has been hospitalized because of mental illness or has been violent towards self or others as a result of mental illness.]

Provides that a conservatorship automatically terminates one year after the appointment of the conservator by the superior court, but permits the conservator to petition the court for re-appointment as conservator for one more year, or for a shorter period.

Permits a conservatee to petition the court "at any time" for a rehearing as to his or her conserved status.

Requires prospective conservatees and actual conservatees to be represented by counsel at hearings and trial, and provides for the appointment of the public defender to represent them.

Permits the Judicial Council to adopt rules, forms, and standards necessary to implement this chapter.

Sets forth numerous procedures and requirements.

continued

Creates new Article 7 in Chapter 6.2 of Part 1 of Division 5 of the Welfare and Institutions Code (W&I 5555–5556) entitled "Housing Conservatorship Working Group" to require the Counties of Los Angeles, San Diego, and San Francisco to establish a working group to evaluate the effectiveness of this new conservatorship program. Requires the working group to be comprised of representatives from a number of different groups, including law enforcement.

Provides that all of the provisions in this bill will sunset on January 1, 2024.

[According to the legislative history of this bill, the purpose of this new type of conservatorship is to help people who may not qualify for a Gravely Disabled Person Conservatorship (W&I 5350–5372), or for a Probate Code Conservatorship (Probate Code 1801), which applies to a person unable to provide properly for his or her own health, food, clothing, or shelter.

W&I 6601
(Amended)
(Ch. 821) (AB 2661)
(Effective 1/1/2019)

Clarifies that an inmate's subsequent conviction for an offense that is not a sexually violent offense committed while in the custody of CDCR or the Dep't of State Hospitals (DSH) while awaiting the resolution of a sexually violent predator (SVP) petition does *not* change the jurisdiction over the pending SVP petition. Thus, a pending SVP petition in Santa Clara County for an inmate who commits an offense in Kern Valley State Prison or in Napa State Hospital that is *not* a sexually violent offense stays in Santa Clara County. But if the inmate commits a sexually violent offense while the SVP petition is pending in Santa Clara County, any subsequent SVP petition must be filed in Kern County or Napa County, if the inmate is convicted of the subsequent sexually violent offense there.

The purpose of this bill is to make sure that the counties with a state hospital and/or a state prison do not get saddled with having to handle the SVP petitions of all inmates who commit sexually violent offenses in other counties, and then when sentenced and shipped off to state prison or a state hospital, commit additional crimes. For example, there have been a number of child pornography cases filed by the Fresno County District Attorney's Office against inmates in the Coalinga State Hospital in Fresno County. Pursuant to this bill, any pending SVP petitions pertaining to inmates

continued

convicted of child pornography crimes would remain in the jurisdiction where the inmates were originally sentenced for the sexually violent offense.

W&I 8103
(Amended)
(Ch. 861) (AB 1968)
(Effective 1/1/2020)

Beginning January 1, 2020, amends subdivision (f) to extend the five-year ban on firearms for a person who is taken into custody pursuant to W&I 5150, assessed, and admitted to a facility for 72-hour psychiatric treatment because he or she is a danger to self or others, to a lifetime firearms ban if the person was previously taken into custody, assessed, and admitted for psychiatric treatment, one or more times during the year preceding the most recent admittance. In other words, a person assessed as a danger to self or others and admitted to a facility for treatment, within one year of a prior admittance, is prohibited from owning, possessing, controlling, receiving, purchasing, or attempting to purchase or receive firearms, for life. Retains the five-year firearm ban for persons with W&I 5150 holds who do not have a previous hold within the preceding year.

Notice of the Firearm Prohibition
Requires the facility to which a person is admitted, to inform the person of the five-year ban or lifetime ban on firearms, whichever applies, before or at the time of discharge from the facility, and requires notification that a court hearing may be requested in order to obtain an order permitting the person to have firearms. Requires DOJ to update the "Patient Notification of Firearm Prohibition and Right to Hearing Form" consistent with this amendment and requires a facility to provide the person with a copy of the form.

Requires the form to include information regarding how the person was referred to the facility and to include an authorization for the release of the person's mental health records, upon request, to the appropriate court, solely for use in a hearing for an order permitting the person to have firearms. Provides that a request for records may be made by mail to the custodian of records at a facility and shall not require personal service.

Submitting the Form to Request a Hearing to Lift the Firearm Prohibition
Prohibits a facility from submitting the form on behalf of the person. Previously, the facility was required to forward the

continued

form to the superior court if the person requested a firearms hearing at the time of discharge.

Timing of a Firearm Hearing
Extends the time for setting a hearing from within 30 days of the court receiving a request for a firearms hearing to within 60 days of the court receiving the request. Extends the length of time for which a district attorney may obtain a continuance, from 14 days to 30 days after the district attorney is notified of the hearing date by the clerk of the court.

Burden of Proof
Continues to provide that the people bear the burden at a hearing of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner, except where a person subject to a lifetime ban files a *subsequent* petition. At a hearing on any subsequent petition, the burden of proof is on the person/petitioner to establish by a preponderance of the evidence that the person can use firearms in a safe and lawful manner.

Hearings to Eliminate the Firearm Ban
Provides that a person subject to a lifetime ban or a five-year ban on firearms may make one request for a firearms hearing at any time during the five-year period or the period of the lifetime prohibition. Provides that for a person subject to a lifetime ban, subsequent hearings may be requested if the court keeps the firearm prohibition in effect. If the court finds that the people have met their burden at a hearing of showing that the person would not be likely to use firearms in a safe and lawful manner and the person is subject to a lifetime ban, the court must inform the person of his or her right to file a subsequent petition no sooner than five years from the date of the hearing. Permits a person subject to a lifetime ban to file subsequent petitions every five years and places the burden on the person to show, by a preponderance of the evidence at any subsequent hearing that he or she can use firearms in a safe and lawful manner.

The Felony Crime in W&I 8103(i)
Retains the W&I 8103(i) felony crime of owning, possessing, controlling, purchasing, receiving, or attempting to purchase or receive a firearm or deadly weapon in violation of W&I 8103. It remains punishable pursuant to P.C. 1170(h) by 16 months, two years, or three years in jail, or by up to one

continued

year in jail. (Persons taken into custody on W&I 5150 holds are subject to a firearm ban, but other persons are subject to a ban on firearms *and* deadly weapons (e.g., mentally disordered offenders, offenders found not guilty by reason of insanity, mentally incompetent defendants, and persons conserved pursuant to W&I 5350).

Retroactivity/Ex Post Facto Issues
The lifetime firearm ban should apply to any person taken into custody pursuant to W&I 5150 and admitted for 72-hour treatment on or after January 1, 2020, even if the preceding hold that makes the person subject to the lifetime ban occurred before January 1, 2020. It is the second hold and treatment within one year that subjects a person to the lifetime firearms ban, and if that occurs on or after January 1, 2020, there should not be any ex post facto issue.

W&I 15610.23
(Amended)
(Ch. 70) (AB 1934)
(Effective 1/1/2019)

Revises the definition of "dependent adult" to clarify that a person qualifies as a dependent adult regardless of whether he or she lives independently.

(This section is a part of the Elder Abuse and Dependent Adult Civil Protection Act.)

[According to the legislative history of this bill, its purpose is to ensure that law enforcement, social workers, dependent adults themselves and their families understand that dependent adults are protected by laws pertaining to dependent adults even if they live independently.]

Topical Index