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Legislative Digest

California District Attorneys Association

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CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

Legislative Digest

— 2021 Edition —

by

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(Amended)
(Ch. 249) (SB 757)
(Effective 1/1/2022)

Adds solar energy systems to the types of home improvement projects (e.g., residential remodels, driveways, swimming pools, spas, landscaping, fences, garages, basements) that are governed by these sections so that solar consumers will have protections such as contract cancellation rights, down payment limits, and a prohibition on a contractor accepting payments that exceed the value of the work performed or materials delivered. Adding solar energy systems also means that a solar energy system seller must register with the Contractors State License Board as a home improvement salesperson.

Amends B&P 7152 to permit a home improvement salesperson to be employed by more than one home improvement contractor, and to require that a salesperson identify to the owner or tenant the business name and license number of the contractor the salesperson is representing for that particular transaction.

Amends B&P 7156 to add an additional misdemeanor crime in new subdivision (c): A home improvement salesperson recommending, selecting, or guiding an owner or tenant in the selection of a contractor if the contractor has not notified the Contractors State License Board, as required by existing B&P 7154(a), that the salesperson is working for the contractor. Continues to provide that any violation of B&P 7156 is also a cause for disciplinary action.

B&P 17204
B&P 17206
B&P 17207
(Amended)
(Ch. 140) (SB 461)
(Effective 1/1/2022)

Adds a county counsel of a county within which a city has a population of over 750,000 to those persons (a district attorney, the Attorney General, a county counsel or city attorney with the agreement of the district attorney, a city attorney of a city with a population of over 750,000) who may bring actions under the Unfair Competition Law and may bring an action to recover a civil penalty for the violation of an injunction prohibiting unfair competition. The three counties that have a city with a population over 750,000 are Los Angeles, San Diego, and Santa Clara.

[Existing B&P 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice; unfair, deceptive, untrue, or misleading advertising; and

continued

any act prohibited by the False Advertising Law (B&P 17500 et seq.). Existing B&P 17535 already authorizes county counsels to bring actions under the False Advertising Law. According to the legislative history of the bill, its purpose is to provide the public with greater protection from unlawful, unfair, or fraudulent business practices.]

B&P 17602
(Amended)
(Ch. 450) (AB 390)
(Effective 7/1/2022)

Expands protections for consumers who accept a free gift or trial, lasting for more than 31 days, that was included in an automatic renewal or continuous service offer at a promotional or discounted price, and for consumers who accept an automatic renewal or continuous service offer with an initial term of one year or longer, that automatically renews unless the consumer cancels, by making it easier to cancel these types of offers.

Adds that it is unlawful for a business to fail to provide the above consumers with a notice that clearly states all of the following:

1. That the automatic renewal or continuous service will automatically renew unless the consumer cancels;
2. The length and any additional terms of the renewal period;
3. One or more methods by which a consumer can cancel the automatic renewal or continuous service;
4. If the notice is sent electronically, the notice must include either a link that directs the consumer to the cancellation process or another reasonable electronic method that directs the consumer to the cancellation process, if no link exists; and
5. Contact information for the business.

For an offer lasting more than 31 days, the notice must be provided at least three days before and at most 21 days before the expiration of the predetermined period of time for which the free gift or trial, or promotional or discounted price, applies.

For an offer with an initial term of one year or more the notice must be provided at least 15 days and not more than 45 days before the automatic renewal offer or continuous service offer renews.

continued

Requires a business that allows a consumer to accept an automatic renewal or continuous service offer online to allow the consumer to terminate the offer online by either:

1. A prominently located direct link or button; or
2. by an immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information.

[Existing B&P 17200 defines "unfair competition" as any unlawful, unfair, or fraudulent business act or practice; or unfair, deceptive, or misleading advertising; or any act prohibited by Chapter 1 of Part 3 of Division 7 of the Business & Professions Code, which covers B&P 17500–17606. Existing B&P 17203, 17204, and 17206 authorize a district attorney, county counsel, specified city attorney, or the Attorney General to bring a civil action to enforce the provisions of B&P 17500–17606.]

B&P 18975
(New)
(Ch. 169) (AB 506)
(Effective 1/1/2022)

Creates Chapter 2.9 in Division 8 of the Business & Professions Code entitled "Youth Service Organizations."

Requires an administrator, employee, or regular volunteer of a youth service organization to complete training in child abuse and neglect identification and reporting. Provides that this training may be met by completing the online mandated reporter training provided by the Office of Child Abuse Prevention in the State Department of Social Services.

Requires an administrator, employee, or regular volunteer of a youth service organization to undergo a background check pursuant to P.C. 11105.3 to identify and exclude any person with a history of child abuse.

Requires a youth service organization to develop and implement child abuse prevention policies and procedures for the reporting of suspected incidents of child abuse and to require to the greatest extent possible the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with or supervising children.

Defines "regular volunteer" as a volunteer with the youth service organization who is age 18 or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.

continued

Defines "youth service organization" as an organization that employs or utilizes the services of persons who, due to their relationship with the organization, are mandated child abuse reporters pursuant to P.C. 11165.7(a)(7).

[The introduced version of the bill amended P.C. 11165.7 to add youth organization volunteers as mandated child abuse reporters if they volunteer more than 16 hours per month or 32 hours per year. This amendment was deleted in later versions of the bill. Existing P.C. 11165.7(a)(7) continues to specify the following persons as mandated child abuse reporters: an administrator or employee of a public or private youth center, youth recreation program, or youth organization. Existing P.C. 11165.7(b) continues to provide that volunteers at public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters, but are encouraged to obtain training in the identification and reporting of child abuse and neglect, and are encouraged to report abuse.]

B&P 25666
(Amended)
(Ch. 208) (AB 1275)
(Effective 1/1/2022)

Amends the Alcoholic Beverage Control Act to eliminate two crimes for which the Department of Alcoholic Beverage Control (ABC) no longer must produce an involved minor at an administrative hearing against a licensee: B&P 25663 (employing a person under age 18 or 21) and B&P 25665 (permitting a person under age 21 to enter or remain in the premises). (These violations can often be proved without the testimony of the minor involved, and the licensee itself can choose to subpoena the minor.)

Continues to require ABC to produce a minor in an administrative hearing for a violation of B&P 25658 (selling, furnishing, or giving an alcoholic beverage to a person under age 21; or a person under age 21 purchasing an alcoholic beverage; or permitting a person under age 21 to consume an alcoholic beverage in on-sale premises), but only if the minor is a "minor decoy."

Adds a definition of "minor decoy": A person under age 21 used by peace officers in the enforcement of B&P 25658 to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcohol to minors.

B&P 26001
B&P 26010
(Amended)
B&P 26010.7
(New)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Changes the name of the Bureau of Cannabis Control (which was in the Department of Consumer Affairs) to the Department of Cannabis Control (which is now within the Business, Consumer Services, and Housing Agency). Vests the Department of Cannabis Control with all the duties, powers, functions, and responsibilities that the Bureau of Cannabis Control had.

and

B&P 26001
(Ch. 87) (SB 160)
(Effective 7/16/2021)

[AB 141 makes numerous amendments to B&P 26000 through B&P 26260, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and to sections of the Fish & Game Code, the Food & Agricultural Code, the Government Code, the Health & Safety Code, the Penal Code, the Revenue & Taxation Code, and the Water Code relating to the above name change, cannabis licensing and licensing suspension, commercial cannabis activity, disciplinary proceedings, trade samples, etc. SB 160 further amends seven Business & Professions Code sections that AB 141 amends or adds (B&P 26001, 26012, 26050.2, 26062, 26063, and 26153.1.)]

B&P 26002
(Amended)
(Ch. 157) (AB 1305)
(Effective 1/1/2022)

Exempts federally licensed cannabis researchers (whose activity is authorized under the federal Controlled Substances Act) from the regulatory and licensure requirements of California's Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). In order to be exempt, the person engaging in cannabis research must provide valid documentation of his or her registration with the United States Drug Enforcement Agency and the location where the activity will be performed.

B&P 26031.2
(New)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Provides that the superior court for the county in which a person has engaged or is about to engage in an act that violates the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) may, upon a petition filed by the Department of Cannabis Control (DCC), issue an injunction or other appropriate order restraining the conduct, or order the violator to make restitution to persons injured as a result of the violation. Authorizes the court to also order the violator to reimburse the DCC for investigation expenses.

Provides that these remedies are in addition to, and not a limitation on, the authority provided for in any other section of MAUCRSA.

B&P 26038
(Amended)
(Ch. 530) (AB 1138)
(Effective 1/1/2022)

Adds that a person who aids and abets unlicensed commercial cannabis activity is subject to civil penalties of up to three times the amount of the license fee for each violation, up to a maximum of $30,000 for each violation. Provides that each day of unlicensed commercial cannabis activity constitutes a separate violation. (Continues to provide that a person who engages in unlicensed commercial cannabis activity is subject to civil penalties of up to three times the amount of the license fee for each violation and continues to specify that each day of operation constitutes a separate violation.)

Provides that in order to prove aiding and abetting all of the following must be demonstrated:

1. The person was an owner, officer, controlling shareholder, or in a similar position of authority allowing him or her to make command and control decisions regarding the operation and management of the unlicensed cannabis activity;
2. the person had actual knowledge that the cannabis activity was unlicensed and that the activity required a license;
3. the person provided substantial assistance or encouragement to the unlicensed cannabis activity; and
4. the person's conduct was a substantial factor in furthering the unlicensed cannabis activity.

Requires an action for civil penalties to be brought within three years from the date of the violation.

Requires the court to consider the following when assessing a penalty:

1. The gravity of the violation;
2. the good faith of the licensee or person;
3. the licensee's or person's history of previous violations; and
4. whether and to what extent the licensee or person profited from the unlicensed cannabis activity.

Removes district attorneys from the list of entities mentioned (the Attorney General, county counsels, city attorneys, and city prosecutors). The legislative history of the bill states that district attorneys were removed because of the Assembly Judiciary Committee's concerns "that district attorneys could

continued

use the threat of this bill's high civil penalties to coerce low-level actors into pleading guilty to questionable criminal charges. That same risk is posed by city attorneys and prosecutors, who are currently allowed to seek penalties under the bill, because many are responsible for prosecuting certain cannabis-related crimes."

B&P 26038(e)(4) is clear that only the Attorney General or a city attorney/prosecutor or county counsel of a city or county with a population over 750,000, can bring an action against an aider and abettor pursuant to B&P 26038(a)(2). But there is no such limitation for actions pursuant to B&P 26038(a)(1) against actual perpetrators. Simply removing "district attorneys" from this section may not prohibit them from bringing an action. It may be that district attorneys can bring B&P 26038(a)(1) actions, but they would not be able to recover their costs in bringing the action. Language in B&P 26038 specifically provides that "if an action" is brought by an Attorney General, county counsel, city attorney, or city prosecutor, the penalty recovered shall first be used to reimburse the entity for its costs, with the remainder going to the General Fund.

B&P 26039.4
(Renumbered from B&P 26135)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Renumbers B&P 26135 to 26039.4 and continues to provide that a peace officer may seize cannabis and cannabis products when the cannabis is subject to recall or embargo by the Department of Cannabis Control, is subject to destruction, or is seized related to an investigation or disciplinary action for a violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA B&P 26000–26260).

B&P 26135
(Renumbered to B&P 26039.4)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Renumbers this section to B&P 26039.4 and continues to provide that a peace officer may seize cannabis and cannabis products when the cannabis is subject to recall or embargo by the Department of Cannabis Control, is subject to destruction, or is seized related to an investigation or disciplinary action for a violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA B&P 26000–26260).

B&P 26153.1 (New) (Ch. 70) (AB 141) (Effective upon the adoption of regulations, but no later than 1/1/2023) and	Requires the Department of Cannabis Control to adopt regulations to establish a process authorizing licensees to designate cannabis or cannabis products as a trade sample. Provides that cannabis designated as trade samples must be labeled "TRADE SAMPLE. NOT FOR RESALE OR DONATION" and shall only be given for targeted advertising to licensees about new or existing cannabis products.
(Amended) (Ch. 87) (SB 160) (Effective upon the adoption of regulations, but no later than 1/1/2023)	Subdivision (j) of this new section provides that it will become effective upon adoption of regulations by the Department of Cannabis Control, but no later than January 1, 2023.

Civil Code

Civil Code 52.1
(Amended)
(Ch. 409) (SB 2)
(Effective 1/1/2022)

Eliminates three immunity provisions for peace officers and custodial officers, and the public entities that employ them, when a civil rights action is brought under Civil Code 52.1, by providing that the state immunity provisions in Gov't C. 821.6, 844.6, and 845.6 *do not apply* to any cause of action brought against a peace officer or custodial officer, or against a public entity that employs a peace officer or custodial officer.

Gov't C. 821.6 provides that a public employee is not liable for an injury caused within the scope of employment even if he or she acts maliciously and without probable cause. Gov't C. 844.6 provides that in general, a public entity is not liable for an injury proximately caused by a prisoner or an injury to a prisoner, unless the injury is proximately caused by an employee's negligent or wrongful act or omission.

Gov't C. 845.6 provides that neither a public employee nor a public entity is liable for an injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his or her custody, unless the employee knows or has reason to know that the prisoner is in need of immediate medical care and fails to take reasonable action, or, the employee is lawfully engaged in the practice of one of the healing arts and the injury is proximately caused by malpractice.

Provides that the indemnification provisions of Gov't C. 825, 825.2, 825.4, and 825.6, which provide for the indemnification of an employee or former employee of a public employee, *shall apply* to a cause of action brought under Civil Code 52.1 against an employee or former employee of a public entity.

(These sections generally require a public entity, upon request, to defend an employee or former employee against a claim for injury arising out of an act or omission occurring within the scope of employment, if the employee reasonably cooperates in good faith in the defense of the claim, and require a public entity to pay any judgment, except for punitive damages.)

continued

[Civil Code 52.1 is known as the Tom Bane Civil Rights Act and permits individuals and entities such as district attorneys, city attorneys, and the Attorney General, to bring a civil action when a person interferes or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by another individual of rights secured by the Constitution or laws of the United States or California.]

[This bill is known as the Kenneth Ross Jr. Police Decertification Act of 2021. It also amends Gov't C. 1029, P.C. 832.7, and amends and adds a number of Penal Code sections from 13503 to 13510.9. See the Government Code and Penal Code sections of this digest for more information.]

Civil Code 55.7
Civil Code 55.8
(New)
(Ch. 750) (AB 1084)
(Effective 1/1/2022)

Creates Part 2.57 in Division 1 of the Civil Code entitled "Gender Neutral Retail Departments."

Requires retail department stores that are physically located in California, that have at least 500 employees in California store locations, and that offer childcare items or toys for sale, to maintain a gender neutral section or area in which "a reasonable selection of items and toys for children" must be displayed, regardless of whether they have been traditionally marketed for either girls or for boys.

Provides that beginning January 1, 2024, a violation of this section is subject to a civil penalty of up to $250 for a first violation or up to $500 for a subsequent violation. Authorizes a district attorney, city attorney, or the Attorney General to bring the civil action, and provides that if any of these entities prevail, the court must award them reasonable attorney's fees and costs.

Defines "children" as persons age 12 and younger. Defines "toy" as a product designed or intended by the manufacturer to be used by children when they play. Defines "childcare item" as any product designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething.

Civil Code 56.18
Civil Code 56.181
Civil Code 56.182
Civil Code 56.184
Civil Code 56.186
(New)
(Ch. 596) (SB 41)
(Effective 1/1/2022)

The Genetic Information Privacy Act.

Creates Chapter 2.6 in Part 2.6 in Division 1 of the Civil Code entitled "Genetic Privacy."

Requires a direct-to-consumer genetic testing company to provide a consumer with information about the company's policies and procedures for collection, use, maintenance, and disclosure of genetic data. Requires a company to obtain a consumer's express consent for collection, use, and disclosure.

Requires a company to honor a consumer's revocation of consent and to destroy the consumer's biological sample within 30 days of revocation of consent.

Requires a company to implement and maintain reasonable security procedures and practices.

Provides definitions for numerous terms used in this Act, including "affirmative authorization," biological sample," "consumer," "express consent," and "genetic data." Defines "direct-to-consumer genetic testing company" as an entity that sells or markets consumer-initiated genetic testing products or services directly to consumers; or analyzes genetic data from a consumer; or collects, uses, maintains, or discloses genetic data collected or derived from a direct-to-consumer genetic testing product or service.

Provides for civil penalties for a violation of this Act. A negligent violation is subject to a civil penalty of up to $1,000 plus court costs. A willful violation is subject to a civil penalty of between $1,000 and $10,000, plus court costs. Authorizes a district attorney, county counsel, city attorney, or the Attorney General to being a civil action and provides that court costs recovered go to the entity that brought the action.

Civil Code 1568.5
(New)
(Ch. 28) (AB 891)
(Effective 1/1/2022)

Provides that a "representation by a minor that the minor's parent or legal guardian has consented shall not be considered to be consent for purposes of this chapter."

The chapter referred to is Chapter 3 ("Consent") in Title 1 ("Nature of a Contract") of Part 2 ("Contracts") of Division Three ("Obligations") of the Civil Code. The bill is aimed

continued

at websites and internet services that state that a minor's use of its services is considered a representation that the minor's parent or legal guardian has consented to the minor establishing a binding contract with the company. The bill seeks to ensure that a contract cannot be formed based solely on the minor's representation that a parent or guardian has consented.

Civil Code 1708.5.6
(New)
(Ch. 170) (AB 556)
(Effective 1/1/2022)

Adds that a private cause of action for damages lies against a person who misuses sperm, ova, or embryos in violation of P.C. 367g. Provides that a prevailing plaintiff who suffers harm as a result of a violation of P.C. 367g may be awarded actual damages, or statutory damages of at least $50,000, whichever is greater.

[P.C. 367g is the felony crime of knowingly using sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the provider's signature on a written consent form, or, knowingly implanting sperm, ova, or embryos into a recipient who is not the provider, without the signed written consent of the provider and the recipient. A violation of P.C. 367g is punishable pursuant to P.C. 1170(h) by three, four, or five years in jail and/or by a fine of up to $50,000.]

[The legislative history of the bill describes instances of fertility fraud, including doctors implanting their own sperm instead of the promised sperm of an anonymous donor.]

Civil Code 5216
(New)
(Ch. 151) (AB 611)
(Effective 1/1/2022)

Requires a homeowners' association, upon the request of a member who is an active participant in the Secretary of State's Safe at Home address confidentiality program for victims of domestic violence, sexual assault, stalking, elder abuse, and human trafficking, to keep member participation in the program confidential and to do both of the following:

1. Accept and use the member's Safe at Home (substitute) address for all association communications instead of the member's actual residential address; and
2. withhold or redact information that would reveal the name, address, or email address of the member from community membership lists, resident directories, etc., and from any membership list that is shared with other members of the association.

continued

The address confidentiality program is authorized by existing Gov't C. 6205–6210.

[Uncodified Section One of this bill lists a number of the Legislature's findings and declarations, including these concerns:

1. Homeowners' association boards often share information about members to other members and to their management company, which in turn shares the information with third-party vendors.

2. Requests by members to opt out of information sharing do not work to resolve the concerns of Safe at Home participants, because board decisions and policies can change when the board or management team changes.]

Code of Civil Procedure

C.C.P. 124
(Amended)
(Ch. 526) (AB 716)
(Effective 1/1/2022)

Prohibits a court from excluding the public from physical access to a courtroom because remote access is available, unless it is necessary to restrict or limit physical access to protect the health or safety of the public or court personnel.

Provides that when a courthouse is physically closed, to the extent permitted by law, the court must provide, at a minimum, a public audio stream or telephonic means by which to listen to the proceedings, unless there is another law that authorizes or requires a proceeding to be closed.

Defines "remote access" as including, but not limited to, an audio stream that is available on an internet website or telephonic means to listen to a court proceeding.

C.C.P. 135
(Amended)
(Ch. 283) (AB 855)
(Effective 1/1/2022)

Removes Columbus Day (the second Monday in October) as a judicial holiday and adds Native American Day (the fourth Friday in September) as a judicial holiday.

[Existing Gov't C. 6700 continues to list all state holidays, including Columbus Day and Native American Day. C.C.P. 135 specifies days on the Gov't C. 6700 list that are or are not judicial holidays.]

C.C.P. 231.7
(New)
(Ch. 318) (AB 3070)
(2020 Legislation)
(Effective 1/1/2021)
(Operative 1/1/2022)

Overview
Adds new provisions changing the system for claims of bias in the exercise of peremptory challenges, by creating a list of reasons that are presumptively invalid, by eliminating the requirement that objecting counsel make a prima facie case of discrimination, and by providing that the court need not find purposeful discrimination in order to find a peremptory challenge improper. These changes apply to all jury trials in criminal cases in which jury selection begins on or after January 1, 2022. Provides that the new rules will apply to civil cases beginning January 1, 2026.

This bill makes major changes to peremptory challenge procedures that have long been in place pursuant to *Batson v. Kentucky* (1986) 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, *People v. Wheeler* (1978) 22 Cal.3d 258, and their progeny.

continued

Prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of the juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or the perceived membership of the prospective juror in any of these groups.

[Existing C.C.P. 231.5 prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of an assumption that the juror is biased merely because of a characteristic listed in Gov't C. 11135 (sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation).]

Who May Object to a Peremptory Challenge
Permits a party, or the trial court on its own motion, to object to the improper use of a peremptory challenge.

Timing
Requires that an objection to a peremptory challenge be made before the jury is sworn, *unless* "information becomes known that could not have reasonably been known before the jury was impaneled."

[This is contrary to long-standing California Supreme Court precedent. Before 2022, the law required that an objection to a peremptory challenge be made *before* the jury is sworn. (*People v. Cunningham* (2015) 61 Cal.4th 609, 662, citing *People v. Howard* (1992) 1 Cal.4th 1132, 1154 and *People v. Thompson* (1990) 50 Cal.3d 134, 179.)]

Making the Objection & Stating Reasons For a Challenge
Provides that when an objection is made to a peremptory challenge, the party exercising the challenge must state the reasons the challenge was exercised. Does *not* require the objector to make a prima facie case of discrimination. The objection itself triggers the requirement to state the reasons for the peremptory challenge.

[Before 2022, the law required the objector to make a prima facie case of discrimination, and if successful, the burden then shifts to opposing counsel to explain why the challenge is not discriminatory.]

Evaluating an Objection to a Peremptory Challenge
Requires the trial court to evaluate the reasons given to

continued

justify the peremptory challenge in light of the totality of the circumstances. Requires the court to consider only the reasons actually given and prohibits the court from speculating on, or assuming the existence of, other possible justifications.

If the court determines there is a substantial likelihood that an "objectively reasonable person" would view race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or perceived membership in any of these groups as a factor in the peremptory challenge, the objection must be sustained, *even if* the court does not find purposeful discrimination. Specifically provides that "The court need not find purposeful discrimination to sustain the objection."

Requires the court to explain the reasons for its ruling on the record.

Provides that an "objectively reasonable person is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in the State of California."

Provides that "unconscious bias" includes implicit and institutional biases.

Defines "substantial likelihood" as "more than a mere possibility but less than a standard of more likely than not."

[This low standard permits the innocent exercise of a peremptory challenge that is *not* discriminatory to be found improper, because it permits a court to find a challenge improper even when the judge determines it is more likely than not that there was *no* discrimination.]

Circumstances the Court May Consider
Provides that the court may consider a number of factors in determining whether a peremptory challenge is discriminatory, including, but not limited to:

1. Whether any of the following circumstances exist:

    (a) The objecting party is a member of the same perceived cognizable group as the challenged juror.

continued

(b) The alleged victim is not a member of that perceived cognizable group.

(c) Witnesses or the parties are not members of that perceived cognizable group.

2. Whether race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or perceived membership in any of those groups, bear on the facts of the case to be tried.

3. The number and types of questions posed to the prospective juror, including, but not limited to, any of the following:

(a) Consideration of whether the party exercising the peremptory challenge failed to question the juror about the concerns later stated as a reason for the challenge.

(b) Whether the party exercising the challenge engaged in cursory questioning of the challenged juror.

(c) Whether the party exercising the challenge asked different questions of the challenged juror in contrast to questions asked of other jurors from different perceived cognizable groups about the same topic, or whether the party phrased those questions differently.

4. Whether other prospective jurors, who are not members of the same cognizable group as the challenged juror, provided similar, but not necessarily identical, answers but were not the subject of a peremptory challenge by that party.

5. Whether a reason might be disproportionately associated with a race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or perceived membership in any of those groups.

6. Whether the reason given by the party exercising the challenge was contrary to or unsupported by the record.

continued

7. Whether the counsel or counsel's office exercising the challenge has used peremptory challenges disproportionately against a given race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or perceived membership in any of those groups, in the present case or in past cases, including whether the counsel or counsel's office who made the challenge has a history of prior violations under *Batson v. Kentucky* (1986) 476 U.S. 79, *People v. Wheeler* (1978) 22 Cal.3d 258, C.C.P. 231.5, or this new section.

[Note that pursuant to the first part of this circumstance, the mere exercise of the challenge in the past could be considered, even if there was nothing improper or discriminatory about it. And no definition of "disproportionate" is provided.]

Reasons For Peremptory Challenges That Will Be Presumed to Be Invalid
Lists a number of reasons for peremptory challenges that will be presumed to be invalid, unless the party exercising the challenge can show by clear and convincing evidence that an objectively reasonable person would view the rationale as **un**related to a prospective juror's race, ethnicity, gender, gender identity, sexual orientation, nation origin, religious affiliation, or perceived membership in any of these groups, and that the reasons articulated bear on the prospective juror's ability to be fair and impartial in the case.

A list of the 13 reasons that will be presumed invalid:

1. Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.
2. Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.
3. Having a close relationship with people who have been stopped, arrested, or convicted of a crime.
4. A prospective juror's neighborhood.
5. Having a child outside of marriage.
6. Receiving state benefits.
7. Not being a native English speaker.
8. The ability to speak another language.
9. Dress, attire, or personal appearance.
10. Employment in a field that is disproportionately occupied by members listed in any of the cognizable

continued

groups or that serves a population disproportionately comprised of members of a cognizable group.
11. Lack of employment or underemployment of the prospective juror or prospective juror's family member.
12. A prospective juror's apparent friendliness with another prospective juror of the same cognizable group.
13. Any justification that is similarly applicable to a questioned prospective juror or jurors, who are not members of the same cognizable group as the challenged prospective juror, but were not the subject of a peremptory challenge by that party. The unchallenged prospective juror or jurors need not share any other characteristics with the challenged prospective juror in order for a peremptory challenge relying on this justification to be considered presumptively invalid.

[Note how one-sided some of these presumptively invalid reasons are. The challenge by a prosecutor of a juror who has had a negative experience with, or distrusts, law enforcement is presumptively invalid, but this rule does not apply to a defense attorney who exercises a peremptory challenge against a juror who has had a positive experience with, or trusts, law enforcement.]

Defines "clear and convincing," which is the standard for overcoming a presumption that a reason for a peremptory challenge is not valid: "Clear and convincing refers to the degree of certainty the factfinder must have in determining whether the reasons given for the exercise of a peremptory challenge are unrelated to the prospective juror's cognizable group membership, bearing in mind conscious and unconscious bias. To determine that a presumption of invalidity has been overcome, the factfinder shall determine that it is highly probable that the reasons given for the exercise of a peremptory challenge are unrelated to conscious or unconscious bias and are instead specific to the juror and bear on that juror's ability to be fair and impartial in the case."

Additional Presumptively Invalid Reasons for Peremptory Challenges (That the Statute Claims Have Historically Been Associated with Improper Discrimination in Jury Selection) and That Must Be Observed by the Court or Objecting Counsel in Order to Be Valid

1. The prospective juror was inattentive, or staring, or failing to make eye contact.

continued

2. The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.
3. The prospective juror provided unintelligent or confused answers.

Provides that the above three reasons are presumptively invalid unless the trial court is able to confirm that the asserted behavior occurred, based on the court's own observations or on the observations of counsel for the objecting party (i.e., the attorney who is objecting to the exercise of the peremptory challenge.) Even if the behavior is confirmed, the attorney offering one of these reasons for a challenge must "explain why the asserted demeanor, behavior, or manner in which the prospective juror answered questions *matters to the case to be tried."* (Emphasis added.)

Remedies
Provides that when a judge finds that a peremptory challenge was exercised improperly, the court shall do one or more of the following:

1. Quash the jury venire and start jury selection anew. (Requires that this remedy be provided if requested by the objecting party.)
2. If the motion is granted after the jury has been impaneled, declare a mistrial and select a new jury if requested by the defendant.
3. Seat the challenged juror.
4. Provide the objecting party additional challenges.
5. Provide another remedy as the court deems appropriate.

Appellate Review
Sets forth how the denial of an objection to a peremptory challenge shall be reviewed by an appellate court by providing that review shall be de novo, with the trial court's express factual findings reviewed for substantial evidence. Prohibits the appellate court from imputing to the trial court any findings, including findings of a prospective juror's demeanor, that the trial court did not expressly state on the record. Requires the appellate court to consider only reasons actually given for a peremptory challenge and prohibits the court from speculating as to, or considering, reasons that were not given to explain either the party's use of the peremptory challenge or the party's failure to challenge similarly situated jurors who were not members of the same cognizable group as the challenged juror, regardless

continued

of whether the moving party made a comparative analysis argument in the trial court. *Provides that if the appellate court determines that the objection was erroneously denied, the error shall be deemed prejudicial*, the judgment shall be reversed, and the case remanded for a new trial.

Opponents of this bill pointed out a number of things, including these:

1. The bill is premature. The California Supreme Court Chief Justice appointed members of a working group in early 2020 to undertake a thoughtful and inclusive study of how jury selection operates in practice in California. This group had not yet finished its work or made public any findings when the bill was passed.

2. The bill infers ill intent, and mandates evidentiary presumptions without any basis or evidence.

3. The bill may be unconstitutional by creating a list of challenges that are intentionally and clearly tailored to make it difficult for the prosecution to excuse jurors, but not the defense. Skewing challenges in this way destroys the balance needed for a fair trial as required by due process and by Section 29 of Article One of the California Constitution, which provides that in a criminal case, "the people of the State of California have the right to due process of law and to a speedy and public trial."

C.C.P. 240
(New)
(Ch. 717) (AB 1452)
(Effective 1/1/2022)

Authorizes the Superior Court of San Francisco, the City and County of San Francisco, and their justice partners to conduct a pilot program of up to two years to pay low-income jurors $100 per day in criminal cases, if their household income for the past 12 months is less than 80 percent of the San Francisco Bay Area median income and if they meet one of these additional criteria:

1. The trial juror's employer does not compensate for jury service;
2. the trial juror is self-employed; or
3. the trial juror is not employed.

[According to an October 12, 2021 article in the *Daily Journal*, Bay Area median income is $71,700 for a single person and $102,500 for a family of four.]

continued

The purpose of the pilot program is to analyze and determine whether paying low-income trial jurors "promotes a more economically and racially diverse trial jury panel that more accurately reflects the demographics of the community."

Provides that the Financial Justice Project of the City and County of San Francisco and the County of San Francisco will fund the pilot program—the payments to low income jurors and the cost of printing information about the program. Requires that information about the pilot program be mailed with every jury summons and that data be collected from jurors who receive the $100 daily fee—race, ethnicity, and income level.

Requires a report about the pilot program to be sent to the Legislature within six months of the conclusion of the program.

C.C.P. 338
(Amended)
(Ch. 264) (AB 287)
(Effective 1/1/2022)

Extends the statute of limitations on civil penalties for unlicensed cannabis activity from one year to three years, by adding a new subdivision (p) to authorize an action for civil penalties under existing B&P 26038 to be commenced within three years.

B&P 26038 is part of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA: B&P 26000–26260). It provides that a person engaging in unlicensed cannabis activity is subject to a civil penalty of up to three times the amount of the license fee for each violation. AB 1138 (Chapter 530) amended B&P 26038 this year to also add a three-year statute of limitations for bringing a civil action pursuant to B&P 26038, and to add specific penalties for aiding and abetting unlicensed commercial cannabis activity: up to three times the amount of the license fee, but not more than $30,000 for each violation. AB 1138 also eliminated district attorneys from the list of entities mentioned in B&P 26038 (the Attorney General, county counsels, city attorneys, and city prosecutors).

The legislative history of AB 1138 states that district attorneys were removed because of the Assembly Judiciary Committee's concerns "that district attorneys could use the threat of this bill's high civil penalties to coerce low-level actors into pleading guilty to questionable criminal charges.

continued

That same risk is posed by city attorneys and prosecutors, who are currently allowed to seek penalties under the bill, because many are responsible for prosecuting certain cannabis-related crimes."

See B&P 26038 in the Business & Professions Code of this digest for more information.

[The legislative history of AB 287 explains that cannabis investigations are complex and often involve multiple local and state agencies that investigate not only the cultivation and manufacturing aspect of the cannabis industry but also environmental crimes associated with the growing of cannabis. A number of consumer protection violations related to the advertisement or ingestion of cannabis products may also be a part of each investigation. By the time each agency has completed its investigation, the one-year statute of limitations may have already run, preventing the case from being brought.]

C.C.P. 367.75
(New)
(Ch. 214) (SB 241)
(Effective 1/1/2022)

Authorizes courts in *civil cases* to conduct proceedings through the use of remote technology, including trials.

Authorizes a court in a civil case to conduct conferences, hearings, and proceedings, in whole or in part, through the use of remote technology. Permits a court to require a party or witness to appear in person at a conference, hearing, or proceeding if the court does not have the necessary technology, or if the quality of the technology is lacking, or if the court determines that an in-person appearance would assist in the determination of the issues or in the resolution of the case.

Permits an expert witness to appear remotely absent good cause to compel in-person testimony.

Authorizes a court to conduct a trial or evidentiary hearing, in whole or in part, through the use of remote technology, absent a showing by a party as to why a remote appearance or testimony should not be allowed.

Requires a court, for any type of remote proceeding, to have a process in place for a party, witness, court reporter, court interpreter, or other court personnel to alert the judge about technology or audibility issues that arise during the proceeding.

continued

Prohibits a court from requiring a party to appear remotely.

Authorizes remote proceedings in juvenile dependency cases, but permits any party to request that the court compel the physical presence of a witness or party. Provides that a witness, including a party providing testimony, may appear remotely in a juvenile dependency hearing only with the consent of all parties and if the witness has access to the appropriate technology. Prohibits a court from requiring a party to appear remotely.

Requires the Judicial Council to adopt rules to implement this new section.

Provides that this new section will sunset on July 1, 2023.

[This new section is part of a bill called the "2021 California Court Efficiency Act." The purpose of this amendment is to provide for remote appearances and remote testimony even after Covid-19 emergency orders for courts are lifted, and to help get through the backlog of civil cases.]

C.C.P. 367.8
C.C.P. 367.9
(New)
(Ch. 257) (AB 177)
(Effective 9/23/2021)

C.C.P. 367.8: Requires the Judicial Council, by January 1, 2023, to submit a report to the Legislature and the Governor on the use of remote technology in civil actions by trial courts, and to include county-specific data.

C.C.P. 367.9: Requires the Judicial Council to convene a working group for the purpose of recommending a statewide framework for remote civil court proceedings.

[New C.C.P. 367.75 (see above), authorizes courts in civil cases to conduct proceedings through the use of remote technology, including trials.]

C.C.P. 527.6
(Amended)
(Ch. 156) (AB 1143)
(Effective 1/1/2022)

Permits a court, during a hearing on a petition for a civil harassment restraining order, to authorize alternative means of serving the respondent. Provides that if the court determines that the petitioner diligently tried but failed to accomplish personal service on the respondent, and there is reason to believe that the respondent is evading service or cannot be located, then the court may specify "another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made."

continued

(Previously, this section required that the respondent be personally served with a copy of the petition or temporary restraining order at least five days before the hearing, unless the court shortened the time for service.)

This amendment makes the service provisions for a hearing on a civil harassment restraining order similar to those for a hearing on a domestic violence restraining order. Existing Family C. 6340(a)(2) authorizes a court to permit an alternative means of service if there is reason to believe that the respondent is evading service. Unlike the amendment to C.C.P. 527.6, Family C. 6340(a)(2) specifies two examples of alternative service:

1. Service by publication; or
2. service by first-class mail sent to the respondent at the most current address that is available to the court.

[The legislative history of the bill points to the case of *Searles v. Archangel* (2021) 60 Cal.App.5th 43, in which a permanent civil harassment restraining order was denied because the harasser was homeless and evading service and therefore could not be personally served. The harasser was on social media, but the court would not permit service via social media because C.C.P. 527.6 required personal service.]

Elections Code

Elections C. 319.5
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Expands the crime of electioneering to include prohibited activities within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot. Also adds obstructing access to a mail ballot drop box to the definition of electioneering.

[Elections C. 319.5 contains the definition of electioneering. Existing Elections C. 18370 and 18371 contain electioneering misdemeanor crimes.]

[This bill also amends Elections C. 18370, 18541, and 18568, to expand misdemeanor and felony crimes related to elections. See below.]

Elections C. 18370
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Expands the list of misdemeanor election crimes to include these:

1. Soliciting a vote, circulating a petition, or electioneering within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot.

2. Soliciting a vote, speaking to a voter about marking the voter's ballot, or disseminating visible or audible electioneering information, to a person on election day or at any time the voter is casting a ballot, within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot.

Elections C. 18541
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Expands the list of felony crimes prohibiting dissuading another person from voting, by adding these crimes:

1. Obstructing ingress, egress, or parking, within 100 feet of a polling place, elections official's office, election satellite location, or curbside voting area.

2. Soliciting a vote, speaking to a voter about marking the voter's ballot, or disseminating visible or audible electioneering information, with the intent of dissuading another person from voting and within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot.

continued

Continues to provide that a violation is punishable in the state prison or by up to 12 months in jail.

Elections C. 18568
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Adds the new felony crime of displaying a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Provides that evidence of the intent to deceive may include using the word "official" on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an election official.

Continues to prohibit conduct such as changing or destroying a ballot, taking ballots from a ballot container, fraudulently adding ballots, and destroying a poll list or ballot container. Continues to provide that the crimes in this section are punishable pursuant to P.C. 1170(h) by 16 months, two years, or three years in jail and/or by a fine of up to $1,000.

Environmental Law

Fish & Game C. 2024
(New)
(Ch. 370) (AB 223)
(Effective 1/1/2022)

Creates two new misdemeanor crimes in order to combat dudleya poaching:

1. Uprooting, removing, harvesting, or cutting dudleya from land owned by the state or a local government, or from private property without written permission from the landowner.

2. Selling, offering for sale, possessing with the intent to sell, transporting or exporting for sale, or purchasing dudleya that was unlawfully uprooted, removed, harvested, or cut.

Defines "dudleya" as a succulent plant belonging to the genus Dudleya and commonly referred to as "live-forevers," that is native to California and grows in natural habitats. Provides that dudleya poaching has increased dramatically because it has become popular in many Southeast Asian countries, where a single plant can sell for up to $1,000.

Provides that a first conviction where the value of the dudleya is $250 or more, is punishable by up to six months in jail and/or by a fine of between $5,000 and $50,000. Provides that a second or subsequent conviction is punishable by up to six months in jail and/or by a fine of between $10,000 and $500,000.

Provides that upon conviction, any seized dudleya shall be forfeited to the Department of Fish and Wildlife.

Permits the court to order the defendant to pay the cost of replanting any dudleya that was forfeited.

Provides for a three-year statute of limitations, by providing that notwithstanding P.C. 802, prosecution must commence within three years after the commission of the offense.

Gov't C. 4216.6
(Amended)
(Ch. 726) (SB 297)
(Effective 1/1/2022)

The Wade Kilpatrick Gas Safety and Workforce Adequacy Act of 2021.

Increases the civil penalties imposed on those who damage subsurface utility installations by adding that an operator or excavator who knowingly and willfully violates any

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provision of Gov't C. 4216–4216.24 that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of a flammable, toxic, or corrosive gas or liquid is subject to a civil penalty of up to $100,000.

Continues to provide that an operator or excavator who negligently violates these Government Code sections is subject to a civil penalty of up to $10,000, and that an operator or excavator who knowingly and willfully violates them is subject to a civil penalty of up to $50,000.

Continues to provide that an action for civil penalties may be brought by a district attorney, the Attorney General, or the local or state agency that issued the permit to excavate. Continues to permit the Registrar of Contractors of the Contractors State License Board to enforce these provisions against contractors; the Public Utilities Commission to enforce them against gas, electrical, and water corporations; and the Office of the State Fire Marshal to enforce them against the operators of hazardous liquid pipeline facilities.

Pub. Res. C. 42270
Pub. Res. C. 42271
(Amended)
Pub. Res. C. 42272
Pub. Res. C. 42273
(New)
(Ch. 505) (AB 1276)
(Effective 1/1/2022)

Expands the prohibition on single-use plastic straws to a prohibition on single-use foodware accessories and standard condiments packaged for single use, unless a consumer requests the item.

Applies to food facilities for on-premises dining and to third-party food delivery platforms. Permits a food facility to ask a drive-through customer if the customer wants a single-use food accessory, but only if the accessory is necessary to eat the food or to prevent spills. Permits a food facility in an airport to ask a walk-through customer if the customer wants a single-use food accessory, but only if the accessory is necessary to eat the food or to prevent spills. Permits third-party food delivery platforms to provide consumers with the option to request single-use accessories or condiments from a food facility.

Permits unwrapped single-use accessories to be made available to consumers in refillable dispensers that dispense one item at a time and permits standard condiments to be made available in self-service dispensers.

continued

Defines "single-use food accessory" as forks, knives, spoons, sporks; chopsticks; condiment cups and packets; straws; stirrers; splash sticks; and cocktail sticks.

Defines "standard condiment" as relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salt, pepper, sugar, and sugar substitutes.

Moves the punishment provisions that had been in Pub. Res. C. 42271 for single-use plastic straw violations to new Pub. Res. C. 42272, without change. Provides that first and second violations will result in a notice of violation and that any subsequent violation is an infraction punishable by a fine of $25 for each day of violation, but not to exceed $300 annually. Requires that cities and counties, by June 1, 2022, authorize an enforcement agency to enforce these new provisions.

Exempts correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

Pub. Res. C. 49650
Pub. Res. C. 49651
Pub. Res. C. 49652
Pub. Res. C. 49653
Pub. Res. C. 49654
(New)
(Ch. 590) (AB 818)
(Effective 1/1/2022)

Creates New Part 9 in Division 30 of the Public Resources Code, entitled "Premoistened Nonwoven Disposable Wipes."

Beginning July 1, 2022, creates labeling requirements for premoistened nonwoven disposable wipes that cannot be flushed, so that consumers can easily identify which wipes can be flushed and which must go into the trash because they are not safe to dispose of in sanitary sewer systems. Examples of premoistened disposable wipes are baby wipes, disinfecting wipes, hand sanitizing wipes, and makeup removal wipes.

Requires the label notice "Do Not Flush" along with a "Do Not Flush" symbol such as this.

Provides that a violation of the labeling requirements by a covered entity (a manufacturer, or, a wholesaler, supplier, or retailer that is responsible for labeling or packaging) is subject to a civil penalty of up to $2,500 per day, and up to a

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maximum of $100,000 for each violation. Authorizes a district attorney, the Attorney General, a city attorney, a county counsel or a city prosecutor to bring an action to recover the civil penalty. Provides that the civil penalties collected go to the office that brought the action. Requires the Attorney General to deposit moneys collected in the Unfair Competition Law Fund established pursuant to Business & Professions Code Section 17206.

Lists a number of factors the court must consider in setting the amount of the penalty, including the circumstances and gravity of the violation; the violator's past and present efforts to prevent or clean up conditions that pose a threat to public health or the environment; the violator's ability to pay the penalty; and whether the violator took good faith measures to comply.

Water C. 13499.2
(New)
(Ch. 187) (SB 776)
(Effective 1/1/2022)

Creates the new felony crime of knowingly making or causing to be made a false statement, material representation, or false certification in any submittal to the State Water Resources Control Board relating to an agreement for financial assistance.

Punishable by 16 months, two years, or three years in state prison or up to one year in county jail, and/or by a fine of up to $10,000.

Provides that a district attorney or the Attorney General, upon request of the state board, may bring an action in superior court to impose the criminal penalty.

[This bill makes a number of amendments relating to water, including creating Chapter 6.7 in Division 7 of the Water Code entitled "Cost Recovery, Enforcement, and Administration" covering new Water C. 13490 through 13499.4. Among other things, the bill consolidates the administrative enforcement authority available to the State Water Resources Control Board to enforce the terms, conditions, and requirements of its financial assistance program as it relates to the Safe and Affordable Drinking Water Program (SB 200, 2019 Laws, H&S 116765–116772). Pursuant to existing law, the Board expends money from the Safe and Affordable Drinking Water Fund to help water systems throughout California provide an adequate and

continued

affordable supply of drinking water. New Water C. 13490–13499.4 contain the above new felony crime and provisions authorizing the Board to recover the financial assistance provided to a recipient that is not expended for authorized purposes, to impose various administrative civil penalties, and to recover its costs in enforcing financial assistance agreements. Also requires the Attorney General, upon request of the Board, to bring an action in superior court to recover the Board's costs and to impose the civil penalty or civil liability.]

Evidence Code

Evid. C. 782
(Amended)
(Ch. 24) (AB 341)
(Effective 1/1/2022)

Adds a definition of "evidence of sexual conduct" to this section, which sets forth the procedures to be followed when a defendant seeks to introduce evidence of a victim's sexual conduct in order to attack the victim's credibility. Provides that "evidence of sexual conduct" includes "those portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense."

The purpose of this bill is to require a written motion, an offer of proof, and a hearing outside the presence of the jury in a sexual assault case, about the admissibility of information in a victim's social media account, just as a motion, offer of proof, and hearing are already required if the defendant seeks to introduce evidence of the victim's sexual conduct. According to the legislative history of the bill, defense attorneys mine the social media accounts of sexual assault victims in order to find information to use against them, to unfairly discredit them, and to attempt to embarrass, shame, or discourage them from testifying.

Evid. C. 1045
(Amended)
(Ch. 402) (SB 16)
(Effective 1/1/2022)

Eliminates the following from the list of peace officer personnel records that a court was prohibited from ordering disclosed when a party in a criminal or civil case sought such information pursuant to what is commonly referred to as a *Pitchess* motion: complaints about conduct that occurred more than five years before the event currently being litigated. Thus, a court may now order disclosure of conduct occurring more than five years before the current incident, if the court finds the information to be relevant.

Continues to prohibit the disclosure of this information:

1. The conclusions of an officer investigating a complaint filed pursuant to P.C. 832.5 (which sets forth procedures for the investigation of complaints by the public against peace officers); and
2. facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

continued

[This bill also amends P.C. 832.5, 832.7, and 832.12, and adds new P.C. 832.13, all relating to records of peace officer misconduct. See the Penal Code section of this digest for more information.]

Evid. C. 1103
(Amended)
(Ch. 529) (AB 939)
(Effective 1/1/2022)

and

(Amended)
(Ch. 626) (AB 1171)
(Effective 1/1/2022)

AB 939
The Denim Day Act of 2021.

Prohibits a court from admitting evidence of the manner in which a specified sexual assault victim was dressed at the time of the crime, on the issue of consent, regardless of whether the evidence is relevant and admissible in the interest of justice.

Previously, paragraph (2) of subdivision (c) of this section permitted evidence of a victim's manner of dress to be admitted if the court determined that the evidence was relevant and admissible in the interest of justice.

Continues to provide that "manner of dress" does not include the condition of the victim's clothing before, during, or after the commission of the offense.

AB 1171
In subdivision (c)(1), eliminates a cross-reference to P.C. 262 (rape of a spouse), which has been repealed and incorporated into P.C. 261, as of 1/1/2022. Subdivision (c)(1) prohibits, in specified cases, the introduction of opinion evidence, reputation evidence, or evidence of specific instances of the victim's sexual conduct to prove consent.

[Since there will be P.C. 262 cases that occurred before 2022 that will be prosecuted in 2022 and perhaps beyond, the amendment should have been to add "former" in front of P.C. 262 instead of eliminating the reference to 262 altogether, so that it is clear that in a P.C. 262 prosecution in 2022 and beyond, the above listed evidence is not admissible to prove consent. A common sense reading of Assembly Bill 1171 should result in the inadmissibility of the above evidence to prove consent in a 262 case.]

[See P.C. 261 and 262 in the Penal Code section of this digest for more information.]

Family Code

Family C. 3044
(Amended)
(Ch. 213) (AB 1579)
(Effective 1/1/2022)

and

(Amended)
(Ch. 626) (AB 1171)
(Effective 1/1/2022)

and

(Amended
(Ch. 685) (SB 320)
(Effective 1/1/2022)

SB 320
Adds an additional factor for the court to consider when deciding whether to order sole or joint custody of a child to a person who perpetrated domestic violence within the previous five years against the other party seeking custody of a child: Whether the court has determined, pursuant to new Family C. 6322.5 (see below), that the perpetrator is a restrained person in possession or control of a firearm or ammunition, in violation of existing Family C. 6389.

AB 1171
Changes a cross-reference from "262" to "former Section 262," to be consistent with AB 1171's repeal of P.C. 262 (spousal rape) and its incorporation into the P.C. 261 rape statute.

AB 1579
Corrects erroneous cross-references to subdivisions in Family C. 3011.

Family C. 6216
(New)
(Ch. 682) (AB 1057)
(Effective 7/1/2022)

Expands the definition of firearms for purposes of firearm restrictions on a person subject to a domestic violence restraining order (DVRO) by providing that for the purposes of Division 10 of the Family Code (sections 6200–6460),"firearm" includes the frame or receiver of the weapon and includes a precursor part.

Thus, a domestic violence restraining order that prohibits a person from having a firearm would also prohibit the person from having parts of a gun—a frame or receiver of a firearm, or a firearm precursor part—and law enforcement would have the authority to seize an intact firearm and parts of a firearm that could be used to assemble a ghost gun.

Provides that "firearm precursor part" has the same meaning as in P.C. 16531(a): A component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame.

[This bill also amends P.C. 16520 to expand the definition of firearm for purposes of gun violence restraining orders in P.C. 18100– 18205. See P.C. 16520 in the Penal Code section of this digest for more information.]

Family C. 6222
(Amended)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Prohibits charging a fee for any filing related to a petition for a domestic violence restraining order or other protective order that is sought pursuant to Family C. 6300–6389.

Family C. 6226.5
(New)
(Ch. 457) (AB 277)
(Effective 1/1/2022)

Requires the Judicial Council, by January 1, 2023, to amend the form entitled "Can a Domestic Violence Restraining Order Help Me?" to include a brief description of the Secretary of State's address confidentiality program (which applies to victims of domestic violence, sexual assault, stalking, human trafficking and elder/dependent adult abuse; Gov't C. 6205–6210), the benefits of the program, and the Internet address for the Secretary of State's Web page that contains detailed information about the program.

Also requires the Judicial Council to make the form available in the languages specified in Civil Code 1632: Spanish, Chinese, Tagalog, Vietnamese, and Korean.

Family C. 6304
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds additional information the court is required to provide to the parties when issuing a domestic violence protective order:

1. How any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures; and
2. The process for submitting a receipt to the court showing proof of relinquishment.

[Existing Family C. 6389 prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect.]

[New Family C. 6322.5 codifies Rule of Court 5.495 to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms and ammunition. See below.]

Family C. 6306
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds procedures requiring a court to notify law enforcement if there is no evidence of compliance with the firearms prohibition contained in existing Family C. 6389, when the court is performing a search of a subject's criminal history,

continued

as required by Family C. 6306, before a hearing on whether a domestic violence protective order should be issued or denied.

If the results of the search the court is required to make into the criminal history of a prospective restrained person turns up information that the subject owns a registered firearm, or if the court receives evidence that the subject possesses a firearm or ammunition, the court is required to make a written record as to whether the subject has relinquished the firearm or ammunition and provided proof of the required storage, sale, or relinquishment. Provides that if evidence of compliance with the firearms prohibition in existing Family C. 6389 is not provided, the court shall order the clerk to immediately notify the appropriate law enforcement officials of the issuance and contents of a domestic violence protective order, information about the firearm or ammunition, and any other information obtained through the search that the court determines is appropriate. Requires the notified law enforcement officials to "take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable."

[Existing Family C. 6389 prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect.]

[New Family C. 6322.5 codifies Rule of Court 5.495 to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms and ammunition. See below.]

Family C. 6306.5
(New)
(Ch. 681) (AB 887)
(Effective 1/1/2022)

Permits petitions seeking domestic violence restraining orders and domestic violence temporary restraining orders to be submitted electronically. Requires the court to accept these filings consistent with the time frame in Family C. 246 (which requires granting or denial of the restraining order on the same day the petition is submitted, unless the petition is filed too late in the day to permit effective review, in which case the order must be granted or denied on the next day of judicial business in sufficient time for the order to be

continued

filed that day with the clerk of the court; existing Family C. 6326 also sets forth this time frame.)

Provides that if granted, the notice of the court date, copies of the request to mail to the respondent, and the temporary restraining order, must be sent to the petitioner electronically.

Permits petitioners to choose to receive documents by regular mail, or to retrieve documents from the court.

Prohibits the charging of a fee for any electronic filings pursuant to this new section.

Requires the Judicial Council to develop or amend rules and forms as necessary to implement this section.

Provides that this new section shall only be operative upon an appropriation of funds in the annual Budget Act or other statute. **But see** new Family C. 6307 (SB 538), below, which requires courts, by July 1, 2023, to accept electronic filing of petitions for domestic violence restraining orders and does not contain any funding contingency.

Family C. 6306.6
(New)
(Ch. 681) (AB 887)
(Effective 1/1/2022)

Requires that information about access to self-help services regarding domestic violence restraining orders be prominently visible on a superior court's Internet Web site.

Family C. 6307
(New)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Requires courts, by July 1, 2023, to permit the electronic filing of petitions for domestic violence restraining orders and domestic violence temporary restraining orders, during and after normal business hours. Requires the superior court of each county to develop local rules and instructions for electronic filing, and to post on its Internet Web site a telephone number for the public to call to obtain information about electronic filing. Requires the telephone line to be staffed during regular business hours and requires court staff to respond to all telephonic inquiries within one business day.

Family C. 6308
(New)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Permits a party or witness to appear remotely at the hearing on a petition for a domestic violence restraining order. Requires the superior court of each county to develop local

continued

rules and instructions for remote appearances and to post them on its Internet Web site. Requires the superior court of each county to post on its Internet Web site a telephone number for the public to call to obtain assistance regarding remote appearances. Requires the telephone line to be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

Family C. 6320
(Amended)
(Ch.135) (SB 374)
(Effective 1/1/2022)

Expands the type of conduct that may be the subject of an ex parte domestic violence restraining order, to include reproductive coercion. Existing language in this section provides that coercive control qualifies as conduct that disturbs the peace of the other party and that disturbing the peace of another is one of the types of conduct a court may enjoin in an ex parte order. Reproductive coercion is added as a fifth example of what constitutes coercive control.

Defines reproductive coercion as control over the reproductive autonomy of another person through force, threat of force, or intimidation, which may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or to attempt to control, pregnancy outcomes.

Family C. 6322.5
(New)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Codifies Rule of Court 5.495, which sets forth the procedures to be followed when a family or juvenile law domestic violence protective order is issued or is in effect (Family C. 6218 or W&I 213.5), and information is presented to the court that the restrained person has a firearm.

New Family C. 6322.5 applies to both firearms and ammunition.

Existing Family C. 6389 provides that a person subject to a Family C. 6218 domestic violence protective order shall not own, possess, purchase, or receive a firearm or ammunition, and requires the court to order relinquishment.

[The legislative history of the bill states that its purpose is to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms.]

continued

Procedures for Determining Whether a Restrained Person Has a Firearm or Ammunition:

The Court Must Consider Relevant Information—When relevant information is presented at a noticed hearing that a restrained person has a firearm or ammunition, the court is required to consider the information and determine, by a preponderance of the evidence, whether the restrained person has a firearm or ammunition in, or subject to, his or her immediate possession or control in violation of Family C. 6389.

The Court Must Determine Whether a Restrained Person Has a Firearm or Ammunition—Provides that the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt, or if an exemption from the firearm prohibition was granted pursuant to Family C. 6389(h) (the firearm or ammunition is necessary for employment). Authorizes the court to make the determination at a noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing, or at any subsequent family or juvenile law hearing while the protective order remains in effect. Provides that if the court determines that the restrained person has a firearm or ammunition in violation of Family C. 6389, the court shall make a written record of the determination and provide a copy to any party who is present at the hearing, and, upon request, to any party not present at the hearing.

Subsequent Review Hearings—Provides that when the court is presented with information that a restrained person has a firearm or ammunition, the court may set a review hearing to determine whether there are been a violation of Family C. 6389.

Requires that the review hearing be held within 10 court days after the noticed hearing at which information was presented. Provides that if the restrained person is not present when the court sets the review hearing, the protected person shall provide notice of the review hearing to the restrained person at least two court days before the review hearing, by personal service or by mail to the restrained person's last known address. Permits the court, for good cause, to extend the date of the review hearing for a reasonable period or remove it from the calendar. Requires the court to order the restrained person to appear at the

continued

hearing. Permits the court to conduct the hearing in the absence of the protected person. Authorizes the court to permit a party or witness to appear remotely.

***A Court May Issue an Order to Show Cause for Contempt or Impose Monetary Sanctions*—**Provides that the determination (about firearms and/or ammunition) made pursuant to this new section may be considered by the court in issuing an order to show cause for contempt pursuant to C.C.P. 1209(a)(5) (Disobedience of any lawful judgment, order, or process of the court) or an order for monetary sanctions pursuant to C.C.P. 177.5 (up to a $1,500 sanction for the violation of a lawful court order, done without good cause or substantial justification.)

Family C. 6323
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds that when determining whether visitation between a parent and a minor child should be suspended, denied, or limited to situations in which a third person is present, the court shall consider a determination made pursuant to new Family C. 6322.5 that the party is a restrained person in possession or control of a firearm or ammunition in violation of Family C. 6389.

[Existing Family C. 6389 prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect, and requires the court to order relinquishment. New Family C. 6322.5 codifies Rule of Court 5.495 to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms and ammunition. See above.]

Family C. 6323.5
(New)
(Ch. 129) (SB 24)
(Effective 1/1/20**23**)

Beginning January 1, 2023, authorizes a court to include in an ex parte domestic violence restraining order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties. Permits a parent or guardian to provide a copy of the order to an essential care provider (e.g., a school, daycare facility, health care facility, dental facility) and/or a discretionary services organization (e.g., an organization that provides recreational activities, entertainment, summer camp, or employment to a minor).

continued

Requires an essential care provider, by February 1, 2023, to develop protocols to ensure that the restrained party is not able to access a child's records or information and to designate the personnel responsible for receiving a protective order. Requires a discretionary services organization to develop protocols within 30 days of receiving its first protective order.

Prohibits an essential care provider or a discretionary services organization, when provided with a copy of the restraining order, from releasing to the restrained party information or records pertaining to the child.

Requires the Judicial Council to develop or update any forms or rules of court that are necessary to implement this section.

Uncodified Section One of this bill provides that this new section will be known as "Calley's Law."

Family C. 6389
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds two additional ways a restrained person may relinquish a firearm or ammunition: transfer to a licensed gun dealer or relinquishment for storage to a licensed gun dealer. Continues to permit a restrained person to sell a firearm or ammunition to a licensed gun dealer, or to surrender them to law enforcement officials.

Adds new requirements for the court. Requires a court to:

1. Review the case file and determine whether the restrained person has filed a receipt showing the surrender or relinquishment of firearms and/or ammunition;
2. inquire of the restrained person whether he or she has complied with the relinquishment requirement; and
3. report violations of the firearms prohibition to the prosecuting attorney within two business days.

Requires, instead of recommending, that every law enforcement agency develop, adopt, and implement written policies and standards for officers who request, pursuant to existing provisions in Family C. 6389, that restrained persons relinquish firearms and ammunition.

continued

[Existing Family C. 6389 prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect, and sets forth relinquishment procedures. Section 6389 requires a court, upon issuing a protective order, to also order the restrained person to relinquish firearms and ammunition. It requires a law enforcement officer who serves a protective order that indicates the restrained person possesses firearms or ammunition, to request that the person immediately surrender them. Provides that if a request is not made by law enforcement, the relinquishment must occur within 24 hours of being served with the protective order.]

[New Family C. 6322.5 codifies Rule of Court 5.495 to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms and ammunition. See above.]

Government Code

Gov't C. 945.9
(New)
(Ch. 595) (AB 1455)
(Effective 1/1/2022)

Expands the statute of limitations for a victim of sexual assault by a law enforcement officer to file a civil lawsuit, revives time-barred actions, and eliminates any requirement that a claim of sexual assault be presented to a public entity.

Provides that if the sexual assault occurred on or after the plaintiff's 18 birthday and while the officer was employed by a law enforcement agency, the time for commencing a civil claim is the later of these dates:

1. Within 10 years after the date of judgment against the officer in a criminal case; or
2. within 10 years after the officer is no longer employed by the law enforcement agency that employed the officer when the sexual assault occurred.

Revives a time-barred action for the sexual assault of a victim age 18 or older by a law enforcement officer, if the claim has not been litigated to finality or compromised by an executed written settlement agreement, and provides that the action may be commenced within either of the following periods of time:

1. Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault; or
2. three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from the act.

Eliminates any requirement that a claim of sexual assault by a law enforcement officer be presented to a public entity.

Defines "sexual assault" as any of the crimes described in P.C. 243.4 (sexual battery), 261 (rape), 262 (spousal rape), 264.1 (rape in concert), 286 (sodomy), 287 or former 288a (oral copulation), or 289 (sexual penetration).

Gov't C. 1029
(Amended)
(Ch. 409) (SB 2)
(Effective 1/1/2022)

Adds several categories of persons to the list of those who are disqualified from holding office as a peace officer, or being employed as a peace officer.

(This is part of a larger bill on police decertification.)

continued

Adds New Peace Officer Disqualifiers

1. Any person discharged from the military for committing an offense, as adjudicated by a military tribunal, which would have been a felony if committed in California.

2. Any person convicted of a felony, regardless of the type of sentence ordered or imposed, and regardless of whether a court later sets aside, vacates, withdraws, expunges, dismisses, or reverses the conviction, unless the person is found factually innocent.

3. Any person adjudicated in an administrative, military, or civil judicial process requiring not less than clear and convincing evidence, as having committed any act that is a violation of P.C. 115 (offering false or forged instruments for filing), 115.3 (altering a certified copy of an official record), 116 (altering a jury list), 116.5 (jury tampering), 117 (falsifying a jury list), any crime in P.C. 92–100 (bribery and corruption), any crime in P.C. 118–131 (perjury), any crime in P.C. 132–141 (crimes related to falsifying, destroying, or tampering with evidence; intimidating witnesses; influencing testimony; bribing witnesses; and threatening witnesses), any crime in P.C. 142–181 (crimes related to disclosing information obtained in a criminal investigation for financial gain; inhumanity to prisoners; false report of felony or misdemeanor; assault by officer under color of authority; bribing local officials; contempt of court).

4. Any person who has been issued a peace officer certification and has had it revoked by the Commission on Peace Officer Standards and Training (POST), or who voluntarily surrendered it, or who has been denied issuance of certification.

5. Any person previously employed in law enforcement whose name is listed in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training, or any other database designated by the federal government, whose certification as a law enforcement officer in that jurisdiction was revoked for misconduct, or who, while employed as a law enforcement officer, engaged in serious misconduct that would have resulted in certification being revoked by POST if employed as a peace officer in this state.

continued

[Retains existing disqualifiers, such as these: A felony conviction; being charged with a felony and found to be mentally incompetent; being found not guilty by reason of insanity for a felony crime; and being determined to be a mentally disordered sex offender.]

Requires DOJ to Supply POST with Conviction Information on Current and Former Peace Officers
Adds a new subdivision (f) to require the Department of Justice (DOJ) to supply POST with necessary disqualifying felony and misdemeanor conviction data for all persons known by DOJ to be current or former peace officers. Permits POST to use this information for decertification purposes. Requires the disqualification data to be made available for public inspection pursuant to the California Public Records Act, including the person's appointment, promotion, and demotion dates, as well as certification or licensing status, and the reason for the person leaving service.

[This bill is known as the Kenneth Ross Jr. Police Decertification Act of 2021. It also amends Civil C. 52.1, P.C. 832.7, and amends and adds a number of Penal Code sections from 13503 to 13510.9. See the Civil Code and Penal Code sections of this digest for more information.]

Gov't C. 1031.4
(New)
(Ch. 405) (AB 89)
(Effective 1/1/2022)

Requires that most peace officers be at least 21 years old at the time of their appointment. Provides that this minimum age does not apply to any person who, as of December 31, 2021, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California.

Specifies these Penal Code sections in describing which peace officers must be at least age 21: P.C. 830.1, except subdivision (c) of 830.1 (deputy sheriffs of specified counties performing duties exclusively related to county custodial facilities); 830.2, except subdivision (d) of 830.2 (members of the Office of Correctional Safety of the Department of Corrections and Rehabilitation, and members of the Office of Internal Affairs of the Department of Corrections and Rehabilitation); 830.3, 830.32, 830.33, and any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program.

continued

[Uncodified Section One of this bill provides that it shall be known as the Peace Officers Education and Age Conditions for Employment Act or the PEACE Act. Uncodified Section Two of the bill contains the Legislature's declarations that there is an interest in minimizing peace officer use of deadly force, that brain development continues into early adulthood, that young adults with a still developing brain may struggle during events that require quick decision making and judgments, and that a study has shown that better educated officers perform better in the academy, receive higher evaluations, have fewer disciplinary problems, are assaulted less often, and miss fewer days of work than their counterparts.]

[This bill also creates new P.C. 13511.1 to task law enforcement stakeholders, the California State University, the Commission on Peace Officer Standards and Training (POST), and community organizations to serve as advisors to the Chancellor of California Community Colleges in order to develop a modern policing degree program. Requires the group, by June 1, 2023, to submit a report with recommendations to the Legislature. See the Penal Code section of this digest for more information.]

Gov't C. 4216.6
(Amended)
(Ch. 726) (SB 297)
(Effective 1/1/2022)

The Wade Kilpatrick Gas Safety and Workforce Adequacy Act of 2021.

Increases the civil penalties imposed on those who damage subsurface utility installations by adding that an operator or excavator who knowingly and willfully violates any provision of Gov't C. 4216–4216.24 that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of a flammable, toxic, or corrosive gas or liquid is subject to a civil penalty of up to $100,000.

Continues to provide that an operator or excavator who negligently violates these Government Code sections is subject to a civil penalty of up to $10,000, and that an operator or excavator who knowingly and willfully violates them is subject to a civil penalty of up to $50,000.

Continues to provide that an action for civil penalties may be brought by a district attorney, the Attorney General, or

continued

the local or state agency that issued the permit to excavate. Continues to permit the Registrar of Contractors of the Contractors State License Board to enforce these provisions against contractors; the Public Utilities Commission to enforce them against gas, electrical, and water corporations; and the Office of the State Fire Marshal to enforce them against the operators of hazardous liquid pipeline facilities.

Gov't C. 6206
Gov't C. 6209.5
(Amended)
Gov't C. 6209.6
(New)
(Ch. 457) (AB 277)
(Effective 1/1/2022)

Requires the Secretary of State, by January 1, 2023, to make the application form, explanatory materials, and notices for the address confidentiality program for victims of domestic violence, sexual assault, stalking, human trafficking, and elder/dependent adult abuse available in at least these five languages besides English: Spanish, Chinese, Tagalog, Vietnamese, and Korean.

Gov't C. 6218
Gov't C. 6218.01
Gov't C. 6218.05
(Amended)
(Ch. 191) (AB 1356)
(Effective 1/1/2022)

Makes several amendments to Chapter 3.25 of Division 7 of Title 1 of the Government Code entitled "Online Privacy for Reproductive Health Services Providers, Employees, Volunteers, and Patients."

Expands the type of information that is prohibited from being knowingly publicly posted or disclosed online about a reproductive health care services patient, provider, or assistant, beyond the home address, home telephone number, or image of the person, to "the personal information" of the person. Defines "personal information" as information that identifies, relates to, describes, or is capable of being associated with a reproductive health care services patient, provider, or assistant, including, but not limited to, the name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, license plate number, employment, employment history, and financial information.

Expands the posting/disclosing prohibition from the "Internet" to "internet websites or social media."

Continues to permit a reproductive health care services patient, provider, or assistant whose personal information or image is unlawfully made public to bring a civil action for damages and an action for injunctive or declaratory relief.

continued

Increases the penalties for the misdemeanor crime in Gov't C. 6218.01 of posting prohibited information with the intent that another person use the information to commit a crime involving violence or a threat of violence against a reproductive health care services patient, provider, or assistant, from a maximum of six months in jail to a maximum of one year in jail, and from a maximum fine of $2,500 to a maximum fine of $10,000.

Increases the fine, if bodily injury results, from a maximum of $5,000 to a maximum of $50,000.

[This bill also creates new misdemeanor crimes in existing P.C. 423.2 for filming a reproductive health services patient, provider, or assistant within 100 feet of a reproductive health care services facility (e.g., an abortion clinic) and for disclosing or distributing the film. The bill also increases the penalties for existing crimes in P.C. 423.2. And, it creates new P.C. 13778.1 to require law enforcement agencies by January 1, 2023, to develop and implement written policies and standards for officer responses to "anti-reproductive rights" calls. See P.C. 423.1–423.3 and 13778.1, in the Penal Code section of this digest.]

Gov't C. 6250–6276.48
(Repealed & Replaced with Gov't C. 7920.000–7931.000)
(Ch. 614) (AB 473)
and
(Ch. 615) (AB 474)
(Effective 1/1/2023)

The California Public Records Act (CPRA) Recodification Act of 2021.

AB 473
On January 1, 2023, AB 473 repeals, replaces, and reorganizes the California Public Records Act by moving it from Gov't C. 6250–6276.48 into new Gov't C. 7920.000–7931.000.

The purpose of this bill is to recodify and reorganize the California Public Records Act without any substantive changes. Uncodified Section 8 of the bill provides that it recodifies the California Public Records Act "in a more user-friendly manner without changing its substance."

New Gov't C. 7920.000–7931.000 are in new Division 10 of Title 1 of the Government Code, entitled "Access to Public Records."

New Gov't C. 7920.100 provides that nothing in the CPRA Recodification Act of 2021 is intended to substantively

continued

change the law relating to inspection of public records and that it is intended to be entirely non-substantive in effect.

Provisions pertaining to law enforcement records and crime victims are in new Gov't C. 7923.600–7923.755 (Articles 1 through 4 in Chapter 1 of Part 5 of New Division 10):

Part 5 (Specific Types of Public Records)
Chapter 1 (Crimes, Weapons, and Law Enforcement)
Article 1 (Law Enforcement Records, Generally): Secs. 7923.600–7923.630
Article 2 (Obtaining Access to Law Enforcement Records): Secs. 7923.650–7923.655
Article 3 (Records of Emergency Communications to Public Safety Authorities): Sec. 7923.700
Article 4 (Records Specifically Relating to Crime Victims): Secs. 7923.750–7923.755

The provisions of Gov't C. 6254(f) are spread out in new 7923.600–7923.625 (sections 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, and 7923.625).

AB 474
AB 474 makes conforming and technical changes in numerous sections in numerous codes (Business & Professions, Civil, Code of Civil Procedure, Corporations, Education, Elections, Evidence, Family, Financial, Fish & Game, Food & Agricultural, Government, Health & Safety, Insurance, Labor, Military & Veterans, Penal, Public Contract, Public Resources, Public Utilities, Revenue & Taxation, Streets & Highways, Vehicle, Water, and Welfare & Institutions).

New Division 10 is organized as follows*:*
Part 1 (General Provisions)
Chapter 1 (Preliminary Provisions)
Article 1 (Short Titles): Secs. 7920.000–7920.005
Article 2 (Effect of Re-codification): Secs. 7920.100–7920.120
Article 3 (Effect of Division): Sec. 7920.200

Chapter 2 (Definitions): Secs. 7920.500–7920.545

Part 2 (Disclosure and Exemptions Generally)
Chapter 1 (Right of Access to Public Records): Secs. 7921.000 –7921.010

continued

Chapter 2 (General Rules Governing Disclosure)
Article 1 (Nondiscrimination): Secs. 7921.300–7921.310
Article 2 (Voluntary Disclosure): Secs. 7921.500-7921.505
Article 3 (Disclosure to District Attorney and Related Matters): Secs. 7921.700–7921.710

Chapter 3 (General Rules Governing Exemptions From Disclosure)
Article 1 (Justification for Withholding of Record): Sec. 7922.000
Article 2 (Social Security Numbers and Related Matters): Secs. 7922.200–7922.210

Part 3 (Procedures and Related Matters)
Chapter 1 (Request for a Public Record)
Article 1 (General Principles): Secs. 7922.500–7922.505
Article 2 (Procedural Requirements Generally): Secs. 7922.525–7922.545
Article 3 (Information in Electronic Format): Secs. 7922.570–7922.585
Article 4 (Duty to Assist in Formulating Request): Secs. 7922.600– 7922.605

Chapter 2 (Agency Regulations, Guidelines, Systems, and Similar Matters
Article 1 (Agency Regulations and Guidelines): Secs. 7922.630–7922.640
Article 2 (Internet Resources): Sec. 7922.680
Article 3 (Catalog of Enterprise Systems): Secs. 7922.700–7922.725

Part 4 (Enforcement)
Chapter 1 (General Principles): Secs. 7923.000–7923.005

Chapter 2 (Enforcement Procedure)
Article 1 (Petition to Superior Court): Secs. 7923.100–7923.115
Article 2 (Writ Review and Contempt): Sec. 7923.500

Part 5 (Specific Types of Public Records)
Chapter 1 (Crimes, Weapons, and Law Enforcement)
Article 1 (Law Enforcement Records, Generally): Secs. 7923.600–7923.630
Article 2 (Obtaining Access to Law Enforcement Records): Secs. 7923.650–7923.655

continued

Article 3 (Records of Emergency Communications to Public Safety Authorities): Sec. 7923.700
Article 4 (Records Specifically Relating to Crime Victims): Secs. 7923.750–7923.755
Article 5 (Firearm Licenses and Related Records): Secs. 7923.800–7923.805

Chapter 2 (Election Materials and Petitions)
Article 1 (Voter Information): Secs. 7924.000–7924.005
Article 2 (Initiative, Referendum, Recall, and Other Petitions and Related Materials): Secs. 7924.100 –7924.110

Chapter 3 (Environmental Protection, Building Standards, and Safety Requirements)
Article 1 (Pesticide Safety and Efficacy Information Disclosable Under the Federal Insecticide, Fungicide, and Rodenticide Act): Secs. 7924.300–7924.335
Article 2 (Pollution): Secs. 7924.500–7924.510
Article 3 (Building Standards and Safety Requirements): Sec. 7924.700
Article 4 (Enforcement Orders): Sec. 7924.900

Chapter 4 (Financial Records and Tax Records): Secs. 7925.000–7925.010

Chapter 5 (Health Care)
Article 1 (Accreditation): Sec. 7926.000
Article 2 (Advance Health Care Directive and Related Matters): Sec. 7926.100
Article 3 (Contracts and Negotiations): Secs. 7926.200–7926.235
Article 4 (In-Home Supportive Services and Personal Care Services): Sec. 7926.300
Article 5 (Reproductive Health Services Facility): Secs. 7926.400–7926.430
Article 6 (Websites and Related Matters): Sec. 7926.500

Chapter 6 (Historically or Culturally Significant Matters): Secs. 7927.000–7927.005

Chapter 7 (Library Records and Similar Matters): Secs. 7927.100–7927.105

Chapter 8 (Litigation Records and Similar Matters): Secs. 7927.200–7927.205

continued

Chapter 9 (Miscellaneous Public Records): Secs. 7927.300–7927.305

Chapter 10 (Personal Information and Customer Records): Secs. 7927.400–7927.420

Chapter 11 (Preliminary Drafts and Similar Materials): Sec. 7927.500

Chapter 12 (Private Industry): Secs. 7927.600–7927.605

Chapter 13 (Private Records, Privileged Materials, and Other Records Protected by Law From Disclosure): Secs. 7927.700–7927.705

Chapter 14 (Public Employee or Official)
- Article 1 (The Governor): Secs. 7928.000–7928.015
- Article 2 (The Legislature): Sec. 7928.100
- Article 3 (Online Posting or Sale of Personal Information of Elected or Appointed Official): Secs. 7928.200–7928.230
- Article 4 (Personal Information of Agency Employee): Sec. 7928.300
- Article 5 (Employment Contracts of Government Employees and Related Matters): Secs. 7928.400–7928.410

Chapter 15 (Public Entity Spending, Finances, and Oversight
- Article 1 (Access in General): Secs. 7928.700–7928.720
- Article 2 (Requirements Specific to Online Access): Sec. 7928.800

Chapter 16 (Regulation of Financial Institutions and Securities): Secs. 7929.000–7929.010

Chapter 17 (Security Measures and Related Matters): Secs. 7929.200–7929.215

Chapter 18 (State Compensation Insurance Fund): Secs. 7929.400–7929.430

Chapter 19 (Test Materials, Test Results, and Related Matters): Secs. 7929.600–7929.610

Part 6 (Other Exemptions From Disclosure)
Chapter 1 (Introductory Provisions): Secs. 7930.000–7930.005

continued

Chapter 2 (Alphabetical List): Secs. 7930.100–7930.215

Part 7 (Operative Date: 1/1/2023): Sec. 7931.000

Gov't C. 7070
Gov't C. 7071
Gov't C. 7072
Gov't C. 7073
Gov't C. 7074
Gov't C. 7075
(New)
(Ch. 406) (AB 481)
(Effective 1/1/2022)

Creates new Chapter 12.8 in Division 7 of Title 1 of the Government Code entitled "Funding, Acquisition and Use of Military Equipment."

Requires a law enforcement agency to obtain approval from a local governing body before requesting, acquiring, seeking funds for, or using, military equipment. Requires the approval to be in the form of an ordinance that adopts a military equipment use policy at an open meeting of the governing body. Examples of governing bodies are city and town councils, and county supervisor boards. Defines law enforcement agencies as police departments (including police departments of transit agencies, school districts, University of California, California State University, and community colleges), sheriff's departments, district attorney offices, and county probation departments.

In contrast, a state agency need not seek approval for military equipment from a governing body, and need only create a military equipment use policy before requesting, acquiring, seeking funds for, or using, military equipment.

Requires a law enforcement agency that wants to continue using military equipment acquired before January 1, 2022, to begin a governing body approval process by May 1, 2022.

Requires the agency to stop using its military equipment if it does not get approval within 180 days of its request to the governing body. In order to seek approval for military equipment, a law enforcement agency must submit a proposed military equipment use policy, which is required to include a number of items, such as a description of the military equipment, its capabilities, and lifespan; the purposes and authorized uses of the equipment; the cost; the legal and procedural rules that govern use; and the training that must be completed before an officer is allowed to use the equipment.

Authorizes a governing body to approve a military equipment use policy only if it determines all of the following:

continued

1. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
2. the proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
3. the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and
4. prior military equipment use complied with the use policy that was in effect at the time, or, corrective action has been taken if prior use did not comply with the use policy.

Provides that a law enforcement agency that receives approval for a military equipment use policy must submit to the governing body an annual military equipment report for each type of military equipment approved, within one year of the governing body's approval, and annually thereafter for as long as the military equipment is in use. Sets forth the detailed information that must be included in the report.

Provides a long definition of "military equipment" including flashbang grenades, explosive breaching tools, taser shockwave, water cannons, projectile launch platforms, firearms of .50 caliber or greater, battering rams that are explosive in nature, weaponized aircraft or vehicles, command and control vehicles, tracked armored vehicles (which use a track system instead of wheels for motion), unmanned aerial or ground vehicles, mine-resistant ambush-protected (MRAP) vehicles, and a catch-all category of "Any other equipment as determined by a governing body or a state agency to require additional oversight."

[This bill was opposed by law enforcement, including the California State Sheriff's Association, which pointed out that Governor Brown vetoed a similar bill in 2018—AB 3131, which did not require governing body approval for the acquisition of military equipment—explaining that the bill created "an unnecessary bureaucratic hurdle without commensurate public benefit."]

Gov't C. 7286
(Amended)
(Ch. 403) (AB 26)
(Effective 1/1/2022)

Adds the following to the list of things that a law enforcement agency's policy on the use of force must include:

continued

1. Procedures to prohibit an officer from training other officers for a period of at least three years from the date that an "abuse of force" complaint against the officer is substantiated.

2. A requirement that an officer who has received all required training on the requirement to intercede and fails to act, be disciplined up to and including in the same manner as the officer who committed the excessive force. (Existing language in this section requires an officer to intercede when he or she observes another officer "using force that is clearly beyond that which is necessary.")

3. A prohibition on retaliation against an officer who reports a suspected violation of a law or regulation by another officer, to a supervisor or other person at the agency that has the authority to investigate the violation.

Adds a definition of "retaliation:" a demotion, failure to promote, denial of access to training, denial of access to resources necessary to properly perform duties, intimidation, harassment, or threat of injury.

Adds a definition of "excessive force:" a level of force that is found to have violated existing P.C. 835a, the requirements on the use of force in this section, or any other law or statute.

Adds a definition of "intercede:" Physically stopping the excessive use of force; recording the excessive force if equipped with a body-worn camera; documenting efforts to intervene or efforts to de-escalate; confronting the officer about the excessive force during the use of force; and, if the officer continues the excessive use of force, reporting to dispatch or the watch commander the offending officer's name, unit, location, time, and situation.

Gov't C. 7286.5
(Amended)
(Ch. 407) (AB 490)
(Effective 1/1/2022)

Prohibits a law enforcement agency from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia.

Continues to prohibit a law enforcement agency from authorizing the use of a carotid restraint or choke hold.

continued

Defines "positional asphyxia" as situating a person in a manner that compresses the airway and reduces the ability to sustain adequate breathing. Provides that this includes the use of a physical restraint that causes a person's respiratory airway to be compressed or impairs breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.

Gov't C. 7321
(New)
(Ch. 294) (AB 263)
(Effective 9/24/2021)

Requires a private detention facility operator to comply with all local and state public health orders and occupational safety and health regulations.

Provides that this is declaratory of existing law.

[The legislative history of the bill highlights the COVID-19 pandemic and states that California has seven privately owned civil detention facilities that have a total capacity of more than 7,200 persons.]

Gov't C. 7920.000–7931.000
(Reorganized and Renumbered from Gov't C. 6250–6276.48)
(Ch. 614) (AB 473)
and
(Ch. 615) (AB 474)
(Effective 1/1/2023)

The California Public Records Act (CPRA) Recodification Act of 2021.

AB 473
On January 1, 2023, AB 473 repeals, replaces, and reorganizes the California Public Records Act in Gov't C. 6250–6276.48 into new Gov't C. 7920.000–7931.000.

The purpose of this bill is to re-codify and reorganize the California Public Records Act without any substantive changes. Uncodified Section 8 of the bill provides that it re-codifies the California Public Records Act "in a more user-friendly manner without changing its substance."

New Gov't C. 7920.000–7931.000 are in new Division 10 of Title 1 of the Government Code, entitled "Access to Public Records."

New Gov't. C 7920.100 provides that nothing in the CPRA Re-codification Act of 2021 is intended to substantively change the law relating to inspection of public records and that it is intended to be entirely non-substantive in effect.

continued

Provisions pertaining to law enforcement records and crime victims are in new Gov't C. 7923.600–7923.755 (Articles 1 through 4 in Chapter 1 of Part 5 of New Division 10):

Part 5 (Specific Types of Public Records)
Chapter 1 (Crimes, Weapons, and Law Enforcement)
- Article 1 (Law Enforcement Records, Generally): Secs. 7923.600–7923.630
- Article 2 (Obtaining Access to Law Enforcement Records): Secs. 7923.650–7923.655
- Article 3 (Records of Emergency Communications to Public Safety Authorities): Sec. 7923.700
- Article 4 (Records Specifically Relating to Crime Victims): Secs. 7923.750–7923.755

The provisions of Gov't C. 6254(f) are spread out in new sections 7923.600–7923.625 (sections 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, and 7923.625).

AB 474
AB 474 makes conforming and technical changes in numerous sections in numerous codes (Business & Professions, Civil, Code of Civil Procedure, Corporations, Education, Elections, Evidence, Family, Financial, Fish & Game, Food & Agricultural, Government, Health & Safety, Insurance, Labor, Military & Veterans, Penal, Public Contract, Public Resources, Public Utilities, Revenue & Taxation, Streets & Highways, Vehicle, Water, and Welfare & Institutions).

See Gov't C. 6250–6276.48, above, for the details on how new Division 10 is organized.

Gov't C. 8010
Gov't C. 8010.5
Gov't C. 8011
(New)
(Ch. 712) (AB 1126)
(Effective 1/1/2022)

Creates new Chapter 1.1 in Division 1 of Title 2 of the Government Code entitled "Commission on the State of Hate."

Establishes the Commission on the State of Hate, to be composed of nine members appointed by the Governor (five members), the Speaker of the Assembly (two members), and the Senate Committee on Rules (two members). Provides that the Attorney General or a designee will serve on the commission as a non-voting member.

Sets forth the goals of the Commission:

continued

1. Provide resources and assistance to the Department of Justice, the Attorney General, law enforcement agencies, and the public on the state of hate, and keep them informed of emerging trends in hate-related crimes;
2. engage in fact finding, data collection, and the production of annual reports on the state of hate and hate-related crimes;
3. collaborate with subject-matter experts in the fields of hate and public safety to gain a deeper understanding in order to monitor and assess trends in hate-related crimes; and
4. advise the Legislature, the Governor, and state agencies on policy recommendations.

Requires the Commission to host at least four virtual community forums per year on hate.

Provides that this new chapter will not be operative until funding is appropriated by the Legislature and will remain in effect only until January 1, 2027.

Gov't C. 12525.2
(Amended)
(Ch. 404) (AB 48)
(Effective 1/1/2022)

Increases, from annually to monthly, the frequency with which a law enforcement agency must furnish to the Department of Justice a report about these incidents: The shooting of a civilian by a peace officer, the shooting of a peace officer by a civilian, the use of force by a peace officer against a civilian that results in serious bodily injury or death, and the use of force by a civilian against a peace officer that results in serious bodily injury or death.

[This bill also adds new P.C. 13652 and new P.C. 13652.1 regarding the use of kinetic energy projectiles and chemical agents by law enforcement to disperse a protest or demonstration. See the Penal Code section of this digest for more information.]

Gov't C. 12525.3
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Expands the Attorney General's authority to investigate officer-involved shootings that result in the death of an unarmed civilian by adding cases in which "there is a reasonable dispute as to whether the civilian was armed."

Gov't C. 14842.5
(Amended)
(Ch. 756) (AB 1574)
(Effective 1/1/2022)

Amends the Small Business Procurement and Contract Act to authorize a district attorney, a city attorney, a county counsel, or the Attorney General to bring a civil action for a violation specified in existing subdivision (a)(6): Knowingly and with intent to defraud, fraudulently representing that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract. Provides for a civil penalty of at least $10,000 but not more than $30,000 for a first violation, and at least $30,000 but not more than $50,000 for each subsequent violation. Also provides that the violator is liable for all costs and attorney's fees incurred by the entity that brings the action.

Prohibits a district attorney, county counsel, or city attorney from bringing an action for a civil penalty if the Department of General Services has concluded an administrative action for the same violation.

Requires a district attorney, county counsel, city attorney, and the Attorney General to notify the Department of General Services before commencing a civil action.

[This bill makes the same amendments to Mil. & Vet. C. 999.9, which is in the Disabled Veteran Business Enterprise Program. See the Military & Veterans Code section of this digest for more information.]

Gov't C. 15403
(New)
(Ch. 583) (AB 625)
(Effective 1/1/2022)

Requires the State Public Defender, in consultation with the California Public Defenders Association and other subject matter experts, to do a study to assess appropriate workloads for public defenders and defense attorneys for the indigent, if funds are appropriated by the Legislature in the annual Budget Act or in another measure. Requires a report to be submitted by January 1, 2024.

Gov't C. 25132
(Amended)
(Ch. 307) (SB 60)
(Effective 9/24/2021)

Increases the maximum fines for an infraction violation of a county short-term rental ordinance (i.e., pertaining to vacation rentals, Airbnbs, etc.), if the infraction poses a threat to public health or safety, to up to $1,500 for a first violation, up to $3,000 for a second violation, and up to $5,000 for each additional violation of the same ordinance within one year of the first violation.

continued

Defines a "short-term rental" as a residential dwelling or portion of a residential dwelling that is rented to a person for 30 consecutive days or fewer.

[This bill also amends Gov't C. 36900 in the same way. Gov't C. 25132 is in the counties section of the Government Code and Gov't C. 36900 is in the cities section.]

[The legislative history of the bill states there has been a significant increase in short-term rentals and that fines under current law are too low to deter violations relating to such things as underage drinking, parties, violence, and noise.]

Gov't C. 29553
(New)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

Specifies how the Director of Finance will disburse the $65 million per year that was appropriated from the General Fund to the Controller by AB 1869 (Chapter 92 of the 2020 Statutes), which eliminated numerous criminal justice administrative fees. Section 67 of AB 1869 provided that the $65 million per year would backfill revenues lost by counties from the repeal of these fees, beginning in the 2021-2022 fiscal year and going through the 2025-2026 fiscal year.

AB 143 requires the state Director of Finance to finalize a methodology for determining how much money each county will be allocated, and sets forth what the methodology must be based on. Specifies that each county's board of supervisors has the authority to determine how the money will be spent.

Gov't C. 36900
(Amended)
(Ch. 307) (SB 60)
(Effective 9/24/2021)

Increases the maximum fines for an infraction violation of a city short-term rental ordinance (i.e., pertaining to vacation rentals, Airbnbs, etc.), if the infraction poses a threat to public health or safety, to up to $1,500 for a first violation, up to $3,000 for a second violation, and up to $5,000 for each additional violation of the same ordinance within one year of the first violation.

Defines a "short-term rental" as a residential dwelling or portion of a residential dwelling that is rented to a person for 30 consecutive days or fewer.

[This bill also amends Gov't C. 25132 in the same say. Gov't C. 25132 is in the counties section of the Government Code and Gov't C. 36900 is in the cities section.]

continued

[The legislative history of the bill states there has been a significant increase in short-term rentals and that fines under current law are too low to deter violations relating to such things as underage drinking, parties, violence, and noise.]

Gov't C. 68119
(New)
(Ch. 257) (AB 177)
(Effective 9/23/2021)

Until it sunsets on January 31, 2022, this new section provides the Judicial Council and its Chairperson with continuing emergency authority to take actions reasonably necessary to respond to the emergency conditions caused by COVID-19, in a manner consistent with the authority that was initially granted to the Judicial Council of California and its Chairperson under the Governor's March 27, 2020, Executive Order N-38-20.

Provides that this new section is intended to confirm that the emergency actions previously taken by the Judicial Council and its Chairperson under the authority of Executive Order N-38-20 and other laws, including emergency rules of court and statewide orders, were lawful and necessary to maintain access to the essential operations of California's court system while protecting the health and safety of California residents.

Gov't C. 68645
Gov't C. 68645.1
Gov't C. 68645.2
Gov't C. 68645.3
Gov't C. 68645.4
Gov't C. 68645.5
Gov't C. 68645.7
(New)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

and

(Ch. 257) (AB 177)
(Effective 9/23/2021)
(Further Amending
Gov't C. 68645)

Creates new Article 7 in Chapter 2 of Title 8 of the Government Code entitled "Ability to Pay Program." This new Article provides for the online adjudication of all infraction violations and the online determination of a defendant's ability to pay, and applies statewide.

[This bill repeals V.C. 40280–40288, which was a pilot program for the online adjudication of Vehicle Code infractions and online ability-to-pay determinations.]

Requires the Judicial Council to develop an online tool for adjudicating infraction violations and making ability-to-pay determinations. Requires that the tool be implemented on a phased schedule, and be available statewide by June 30, 2024. Permits a defendant, a designee of a defendant, or the defendant's attorney, "upon certification," to access the online tool. Provides that a defendant shall not be compelled to use the online tool.

continued

Adjudication Through Technology, Date of Conviction, and Court Communication with the DMV (Gov't C. 68645.1)
For all infraction violations for which a personal appearance is not required, a court may allow a defendant to agree to forfeit bail, plead guilty or nolo contendere, request an ability-to-pay determination, or otherwise adjudicate matters through the use of technology. Provides that the date a defendant agrees to forfeit bail and plead guilty or nolo contendere is the date of conviction. Provides that when a defendant agrees to forfeit bail or plead guilty or nolo contendere, or requests an ability-to-pay determination, the defendant has appeared within the meaning of existing V.C. 40509(a) and 40509.5(a), and the court must immediately file with the Department of Motor Vehicles the required certificate to recall any failure to appear notifications that have been sent for the citation.

Ability-to-Pay Determinations (Gov't C. 68645.2)
Requires every court, by June 30, 2024, to offer online ability-to-pay determinations using the tool developed by the Judicial Council. Provides that the defendant has the burden of establishing an inability to pay. Requires courts to establish criteria for determining ability to pay and requires courts to consider, at a minimum, these two factors:

1. Receipt of any public benefits; and
2. a monthly income of a minimum of 125 percent of the current poverty guidelines.

Provides that the court has the discretion to make an order consistent with the defendant's present and reasonably discernible future financial circumstances. Specifies that a court is not required to make express findings as to the factors bearing on the amount it orders payable by the defendant.

Based on an ability-to-pay determination, authorizes a court to waive or reduce the total amount due for an infraction violation, extend the time for payment, permit payment on an installment plan, permit the defendant to do community service in lieu of payment, suspend the total amount due in whole or in part, or offer an "alternative disposition."

Prohibits a court or county from charging an administrative fee for an ability-to-pay determination.

continued

Verifying Receipt of Public Benefits (Gov't C. 68645.3(a), (b), (d) and (e))
Permits a court to allow the online tool to electronically verify through encrypted transmittal whether a defendant receives public benefits, by accessing a statewide or county database, including the State Department of Social Services.

Requires a court to obtain the defendant's consent before the online application may electronically verify benefits. Provides that if a court is not able to verify that a defendant receives public benefits, the defendant may submit other evidence of an inability to pay.

Permits each court to authorize the clerk of the court to make ability-to-pay determinations. Provides that if the clerk of the court denies a reduction of the amount owed, the defendant has the right to a review of the decision by "a judicial officer in the trial court."

What Defendants Must Be Informed of (Gov't C. 68645.3(c))
Requires the online application process to inform a defendant that:

1. The defendant has the burden of establishing the inability to pay;
2. online verification is one of the possible means of substantiating the inability to pay;
3. there are other accepted means of verifying inability to pay; and
4. a defendant may upload other evidence in addition to or in lieu of, the verification results.

Online Trials (Gov't C. 68645.4)
Permits a court to offer online trials for all infractions for which a personal appearance is not required. If a defendant elects an online trial, a court is prohibited from requiring a defendant to submit bail in advance, unless the court makes express findings as to why a particular defendant shall be required to submit bail.

Provides that if a court elects to offer online trials, it must also make trials by written declaration available to defendants.

For online trials or trials by written declaration, permits testimony and other relevant evidence to be introduced in

continued

the form of a notice to appear, a business record or receipt, a sworn declaration of the arresting officer, and a sworn declaration of the defendant.

[Existing V.C. 40902 provides for trial by written declaration for Vehicle Code infractions. The type of evidence permissible in new Gov't C. 68645.4 for online trials and trials by written declaration is the same as in existing V.C. 40902(c).]

Judicial Council Report to the Legislature (Gov't C. 68645.5)
Requires the Judicial Council, by February 1, 2022 and every year until February 2025, to provide a report to the Legislature with information from participating courts that have adopted online ability-to-pay determinations for infraction violations, including the total number of infraction filings; the total number of ability-to-pay determinations made through the online tool or through other locally established ability-to-pay procedures; demographic information on defendants using the online tool; the total amount of fines and fees assessed for defendants making ability-to-pay requests; the total amount of adjusted fines and fees recommended by the online tool; the number of payment plans ordered through the online tool; and the number of online trials conducted.

Backfill Funding (Gov't C. 68645.7)
Requires the Department of Finance, in consultation with the Judicial Council, to estimate the level of funding needed to backfill the money the judicial branch will lose because of reductions in the amount owed that are granted to defendants through ability-to-pay determinations.

Gov't C. 68701.1
(New)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

Requires the Commission on Judicial Performance, in order to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system, to take all reasonable steps to determine the existence or extent of alleged judicial misconduct.

Gov't C. 68770
Gov't C. 68771
Gov't C. 68772
(New)
(Ch. 79) AB 143)
(Effective 7/16/2021)

Creates new Article 4 in Chapter 2.5 of Title 8 of the Government Code entitled "Committee to Review the Operations and Structure of the Commission on Judicial Performance."

Requires a committee of 15 members to study and make recommendations for changes in the operations and structure of the Commission on Judicial Performance that would improve the commission's ability to carry out its mission to protect the public, to enforce rigorous standards of judicial conduct, and to maintain public confidence in the integrity and independence of the judiciary. Requires the committee to hold hearings and to produce a written report by March 30, 2023.

Gov't C. 76000.10
(Amended)
(Ch. 476) (AB 1104)
(Effective 10/4/2021)

Extends the assessment of penalties pursuant to the Emergency Medical Air Transportation Act ($4 on every conviction for a violation of the Vehicle Code, except parking offenses) to December 31, 2022. Previously the assessment of this penalty was due to end on July 1, 2021. It will now end on December 31, 2022.

[This bill also creates new W&I 14124.15 to require the Department of Health Care Services, subject to an appropriation by the Legislature, to design and implement a supplemental payment program for emergency medical air transportation services that uses Medi-Cal reimbursements to permanently fund this Act.]

Health & Safety Code

H&S 11056
(Amended)
(Ch. 618) (AB 527)
(Effective 1/1/2022)

Adds a cross-reference to new H&S 11059 to exempt from the list of controlled substances in Schedule III (H&S 11056) a compound, mixture, or preparation that contains a non-narcotic controlled substance in combination with a derivative of barbituric acid or any salt thereof that is listed in the federal Table of Exempted Prescription Products and has been exempted pursuant to federal law or regulation. [See H&S 11059, below, for more information.]

H&S 11057
(Amended)
(Ch. 618) (AB 527)
(Effective 1/1/2022)

Adds a cross-reference to new H&S 11059 to exempt from the list of controlled substances in Schedule IV (H&S 11057) a compound, mixture, or preparation that contains a non-narcotic controlled substance in combination with chlordiazepoxide or phenobarbital that is listed in the federal Table of Exempted Prescription Products and has been exempted pursuant to federal law or regulation.

[See H&S 11059, below, for more information.]

H&S 11059
(New)
(Ch. 618) (AB 527)
(Effective 1/1/2022)

Provides that a compound, mixture, or preparation that contains a non-narcotic controlled substance in combination with a derivative of barbituric acid or any salt thereof that is listed in the federal Table of Exempted Prescription Products and has been exempted pursuant to federal law or regulation is no longer a prohibited Schedule III (H&S 11056) controlled substance).

Provides that a compound, mixture, or preparation that contains a non-narcotic controlled substance in combination with chlordiazepoxide or phenobarbital that is listed in the federal Table of Exempted Prescription Products and has been exempted pursuant to federal law or regulation is no longer a prohibited Schedule IV (H&S 11057) controlled substance.

[According to the legislative history of this bill, eliminating these combination substances from Schedules III and IV aligns California's controlled substance schedules more closely with federal schedules and helps avoid confusion for pharmacists and health care professionals. The federal government maintains a Table of Exempted Prescription

continued

Products that do not require scheduling because the compound contains a non-narcotic substance in combination with a narcotic whose strength is significantly less than that of the non-narcotic. Federal law exempts from scheduling combination drugs such as Fioricet (a butalbital product with barbituric acid that is used to treat tension headaches), Donnatal (a combination product containing phenobarbital that is used to treat irritable bowel syndrome), and Librax (a combination product containing chloradiazepoxide that is used to treat stomach and intestinal disorders).]

[This bill also amends H&S 11056 and 11057 to add a cross-reference to new H&S 11059.]

H&S 11150.2
(Amended)
(Ch. 618) (AB 527)
(Effective 1/1/2022)

Expands to all cannabinoids, existing provisions that authorize physicians to prescribe, and pharmacists to dispense, drugs and medicine approved by the federal Food and Drug Administration (FDA) and rescheduled under the federal Controlled Substances Act. Previously, this section permitted patient access to FDA-approved cannabidiol drugs. By changing "cannabidiol" to "cannabinoids," the provisions of this section are expanded to cannabis-related drugs even if they do not contain cannabidiol as the active ingredient.

H&S 11165
(Amended)
(Ch. 618) (AB 527)
(Effective 1/1/2022)

Requires that the University of California be provided access to identifiable data from the Controlled Substance Utilization Review and Evaluation System (CURES) for research purposes, if personal information is protected from improper use and disclosure.

[CURES is a database for the prescribing and dispensing of controlled substances by health practitioners who are authorized to prescribe, order, administer, furnish, or dispense controlled substances.]

H&S 11370
(Amended)
(Ch. 537) (SB 73)
(Effective 1/1/2022)

Expands probation eligibility in drug cases by eliminating crimes that had previously triggered mandatory probation ineligibility, and by converting the entire section to presumptive probation ineligibility only.

Subdivision (a) is amended to provide that only a violation of H&S 11353 or 11361 will make a defendant ineligible for

continued

probation when the defendant has a prior drug conviction specified in subdivision (c). Both H&S 11353 and 11361 involve selling or furnishing illegal drugs to a minor, or using a minor to sell or transport illegal drugs. These crimes are *removed* from subdivision (a): H&S 11350, 11351, 11351.5, 11352, 11355, 11357, 11359, 11360, 11363, 11366, and 11368.

Both subdivision (a) and (b) are amended to make defendants only presumptively ineligible for probation. New subdivision (e) provides that a defendant who comes within the provisions of H&S 11370 may be granted probation only in an unusual case where the interests of justice would best be served. Requires the court to specify on the record the circumstances supporting its finding that the case is unusual.

Retroactivity
Nothing in SB 73 mentions whether these amendments are prospective or retroactive in application. The general default rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3 and *People v. Brown* (2012) 54 Cal.4th 314, 319.)
The exception to the default rule is that when a new law mitigates punishment, it will be presumed to apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740, 745.)

The amended version of H&S 11370 will apply prospectively to every pending case on January 1, 2022, even if the crime occurred before 2022. Any defendant sentenced on and after January 1, 2022 will be able to take advantage of the new version of H&S 11370. Whether the new version of H&S 11370 applies retroactively to defendants sentenced before 2022 whose cases are not final as of January 1, 2022, will depend on whether the amendment to H&S 11370 is deemed a lessening of punishment and/or an ameliorative benefit. Based on the retroactivity rulings from the courts over the last few years on a variety of issues (e.g., the shortening of probation periods, the elimination of three-year H&S 11370.2 drug priors, the authority of a court to strike five-year P.C. 667(a) enhancements and P.C. 12022.53 firearm enhancements, and the changes to direct filing of juvenile cases in adult court), the courts may rule that the new version of H&S 11370 applies retroactively.

continued

[This bill also repeals all of P.C. 1203.073 (presumptive probation ineligibility in a number of specified drug cases). It also amends P.C. 1203.07 to eliminate all but two of its probation ineligibility circumstances, and to convert it from mandatory probation ineligibility to presumptive probation ineligibility only. See the Penal Code section of this digest for more information.]

H&S 11474
(Amended)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Adds the Department of Cannabis Control (renamed from the "Bureau of Cannabis Control" by this bill) to the list of law enforcement agencies (police departments, sheriff's departments, DOJ, CHP, and the Dep't of Alcoholic Beverage Control) that may carry out a court order for the destruction of controlled substances, instruments, or paraphernalia.

H&S 11489
(Amended)
(Ch. 83) (SB 157)
(Effective 7/16/2021)

Re-directs the asset forfeiture money from drug cases that had previously funded education and training for prosecutors and law enforcement in the seizure and forfeiture of assets, to now go to the Environmental Enforcement and Training Account, established by existing P.C. 14303.

H&S 122317
H&S 122318
H&S 122319
H&S 122319.5
(New)
(Ch. 168) (AB 468)
(Effective 1/1/2022)

Creates new Article 4 in Chapter 5 of Part 6 of Division 105 of the Health & Safety Code entitled "Emotional Support Animals."

Adds new provisions regarding emotional support animals in order to reduce fraud and misrepresentation, and provides that a violation is subject to a civil action that may be brought by a district attorney, county counsel, city attorney, or the Attorney General.

H&S 122317(a)
Requires a seller or provider of an emotional support dog to provide written notice to the buyer or recipient of all of the following:

1. The dog does not have the training required to qualify as a guide, signal, or service dog;
2. the dog is not entitled to the rights and privileges accorded by law to a guide, signal, or service dog; and
3. knowingly and fraudulently representing oneself to be the owner or trainer of a canine licensed or qualified as a

continued

guide, signal, or service dog is a misdemeanor violation of existing P.C. 365.7.

H&S 122317(b)
Requires a seller or a provider of a certificate, identification, tag, vest, leash, or harness for an emotional support animal, to provide written notice to the buyer or recipient that states both of the following:

1. The item does not entitle an emotional support animal to the rights and privileges accorded by law to a guide, signal, or service dog; and
2. knowingly and fraudulently representing oneself to be the owner or trainer of a canine licensed or qualified as a guide, signal, or service dog is a misdemeanor violation of existing P.C. 365.7.

H&S 122318
Prohibits a health care practitioner from providing documentation of a person's need for an emotional support dog unless all of the following are complied with:

1. The practitioner possesses a valid and active license, and specified information about the license is included in the documentation;
2. the practitioner is licensed to provide professional services within the scope of the license in the jurisdiction in which the documentation is provided;
3. the practitioner establishes a client-provider relationship with the person for at least 30 days prior to providing documentation about the person's need for an emotional support dog;
4. the practitioner completes a clinical evaluation of the person regarding the need for an emotional support dog; and
5. the practitioner provides a verbal or written notice to the person that knowingly and fraudulently representing oneself to be the owner or trainer of a canine licensed or qualified as a guide, signal, or service dog is a misdemeanor violation of existing P.C. 365.7.

H&S 122319
Provides that a violation of either of the following is subject to a civil penalty of $500 for a first violation, $1,000 for a second violation, and $2,500 for a third or subsequent violation:

continued

1. Knowingly and fraudulently representing, selling, or offering for sale, attempting to represent, sell, or offer for sale, an emotional support dog as being entitled to the rights and privileges accorded by law to a guide, signal, or service dog; or
2. violating the written notice requirements specified in H&S 122317.

Authorizes a district attorney, county counsel, city attorney, or the Attorney General to being an action for civil penalties.

H&S 122319.5
Defines "emotional support animal" and "emotional support dog" as an animal that provides emotional, cognitive, or other similar support to an individual with a disability, and that does not need to be trained or certified.

Juvenile Offenders

(See the Welfare & Institutions Code section of this Digest for W&I changes that pertain to subjects other than juvenile criminal law.)

P.C. 236.14
(Amended)
(Ch. 193) (AB 262)
(Effective 1/1/2022)

Makes several changes to this section that provides for vacatur relief to a person who was arrested or convicted of a non-violent offense while he or she was a victim of human trafficking. Continues to apply to juvenile and adult crimes. See the Penal Code section of this digest for more information.

P.C. 236.15
(New)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Provides a procedure for vacatur relief when a person is arrested for or convicted of a non-violent offense (i.e., a non-P.C. 667.5(c) crime), committed while the person was a victim of intimate partner violence or sexual violence. This new section is almost identical to existing P.C. 236.14, which provides for arrest and conviction vacatur relief for victims of human trafficking.

As with P.C. 236.14, new P.C. 236.15 applies to both adult and juvenile cases.

For juvenile offenses, if the petitioner establishes that the arrest or adjudication was the direct result of being a victim of intimate partner violence or sexual violence, there is a rebuttable presumption that the requirements for relief have been met.

[See the Penal Code section of this digest for more about this new section.]

P.C. 236.23
(Amended)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Expands to serious felonies (P.C. 1192.7(c)) the affirmative defense of being coerced to commit an offense as a direct result of being a human trafficking victim at the time of the offense and the person had a reasonable fear of harm. Previously, this defense was not available for serious felonies or violent felonies (P.C. 667.5(c)). Now the only disqualifying crime category is violent felonies.

P.C. 236.23 continues to apply to both adult and juvenile cases. P.C. 236.23(f) continues to provide that in a W&I 602 proceeding, if the juvenile court finds that the offense was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense is established

continued

by a preponderance of the evidence, the court is required to dismiss the proceeding and order the relief provided for in W&I 786. (W&I 786 permits a sealed record to be accessed, inspected, and utilized under specified circumstances.)

[See the Penal Code section of this digest for more about the amendments to P.C. 236.23.]

P.C. 236.24
(New)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Establishes the affirmative defense of being coerced to commit a crime as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense, and the defendant had a reasonable fear of harm. This new section is modeled after, and is almost identical to, P.C. 236.23, which provides the affirmative defense of being coerced to commit a crime as a direct result of being a victim of human trafficking at the time of the offense.

As with P.C. 236.23, new 236.24 applies to both adult and juvenile cases. P.C. 236.24(f) provides that in a W&I proceeding, if the juvenile court finds that the offense was committed as a direct result of the minor being a victim of intimate partner violence or sexual violence, and the affirmative defense is established by a preponderance of the evidence, the court is required to dismiss the proceeding and order the relief provided for in W&I 786. (W&I 786 permits a sealed record to be accessed, inspected, and utilized under specified circumstances.)

[See the Penal Code section of this digest for more about this new section.]

P.C. 1170.17
P.C. 1170.19
(Repealed)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Repeals both of these sections, which were already obsolete. See the Penal Code section of this digest for more information.

P.C. 3056
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Provides that until July 1, 2021, a parole violator who is under 18 years of age may be housed in a facility of the Division of Juvenile Justice, Department of Corrections and Rehabilitation.

W&I 208.5
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Adds that a person whose case originated in juvenile court but who was sentenced in adult court cannot serve their sentence in a juvenile facility. However, such a juvenile, "if not otherwise excluded," may remain in a juvenile facility until transferred to serve the sentence in an adult facility.

Makes a technical amendment to eliminate an obsolete cross-reference to a particular paragraph in existing W&I 731, because 731 no longer contains paragraphs. The cross-reference is now to the entirety of W&I 731.

W&I 209
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Permits any authorized officer, employee, or agent of the Board of State and Community Corrections to enter and inspect any area of a local detention facility, without notice. Continues to require that the Board of State and Community Corrections inspect each juvenile hall, lockup, or special purpose juvenile hall at least every other year.

W&I 607
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Corrects several cross-references to paragraphs within W&I 607. These are technical amendments only. When W&I 607 was amended by legislation in 2020, a new subdivision (c) was added and subdivisions below (c) were re-lettered, but the various subdivision cross-references throughout W&I 607 were not updated.

[W&I 607 describes the scenarios in which a juvenile court may retain jurisdiction over a juvenile offender until age 21, 23, or 25. New subdivision (c), operative July 1, 2021, provides that a court may retain jurisdiction over a juvenile offender who committed a W&I 707(b) offense until the juvenile reaches age 25, if the juvenile would have faced a sentence of seven years or more in adult court.]

W&I 636
(Amended)
(Ch. 86) (AB 153)
(Effective 7/16/2021)

Amends this section that sets forth the circumstances pursuant to which a court may detain a juvenile offender in juvenile hall or in another placement, by adding that on and after October 1, 2021, the placement of a juvenile in a short-term residential therapeutic program must comply with amended W&I 4096 and be reviewed by the court pursuant to new W&I 727.12.

[Amended W&I 4096 governs interagency placement committees related to the placement of juvenile wards or dependent children in short-term residential therapeutic

continued

programs or in out-of-state residential facilities, and requires that an assessment be conducted by a trained professional or a licensed clinician before a minor is placed by a probation department or a county child welfare agency.

New W&I 727.12 requires each placement of a minor or non-minor dependent in a short-term residential therapeutic program to be reviewed by the court within 45 days of the start of the placement. See W&I 727.12, below, for more information.]

W&I 654.3
(Amended)
(Ch. 603) (SB 383)
(Effective 1/1/2022)

Expands eligibility for informal supervision pursuant to W&I 654 and 654.2 in these ways:

1. Eliminates the drug offenses that previously were disqualifiers for informal supervision (sale or possession for sale of a controlled substance; H&S 11350 or 11377 committed at a school); and
2. eliminates the disqualifier of committing a felony offense at age 14 or older.

Continues to provide that an offense in which restitution owed to the victim is more than $1,000, is a disqualifier. Adds that a minor's inability to pay restitution due to indigence is not grounds for finding a minor ineligible for informal supervision or for finding that the minor has failed to comply with the terms of the supervision program.

[*Note*: Because the age 14 disqualifier for informal supervision was added by Proposition 21 (March 2000), a two-thirds vote is required to amend it. This bill received over a two-thirds vote in both the Assembly (58-16) and the Senate (29-7).]

W&I 704
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Makes several technical amendments by changing the obsolete term "Youth Authority" to the "Division of Juvenile Justice." Adds that this section will become inoperative on July 1, 2021 and be repealed on January 1, 2022.

[W&I 704 authorized a court to place a juvenile temporarily at a diagnostic and treatment center of the Youth Authority for up to 90 days so that an observation and diagnosis of the minor could be done.]

W&I 707.2
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Makes several technical amendments by changing the obsolete term "Department of the Youth Authority" to the "Division of Juvenile Justice." Adds that this section will become inoperative on July 1, 2021 and be repealed on January 1, 2022.

[W&I 707.2 authorized an adult court to remand a minor to the custody of the Youth Authority for an evaluation and report about the minor's amenability to the training and treatment offered by the Youth Authority.]

W&I 726
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Reduces the length of time a juvenile offender may be held in physical confinement *from* the maximum term of imprisonment that could be imposed on an adult convicted of the same crime *to* "the middle term of imprisonment" that could be imposed on an adult convicted of the same crime. This amendment makes W&I 726 consistent with W&I 731 (amended by SB 823 in 2020), which limits a commitment to the Division of Juvenile Justice to the middle term of imprisonment that could be imposed on an adult convicted of the same offense. As with W&I 731, there is no provision explaining how the middle term of imprisonment rule would apply in a multi-count case.

W&I 727.05
(Amended)
(Ch. 687) (SB 354)
(Effective 1/1/2022)

Permits a court to authorize the placement of a minor on an emergency basis in the home of a relative, regardless of the relative's criminal record status and regardless of the placement recommendation of the county probation agency, if the court finds the placement does not pose a risk to the health and safety of the child. Thus, the court may make a case-by-case determination and place a minor with a relative who has a disqualifying criminal conviction and who has not obtained a criminal record exemption, if the court finds the placement will be safe for the minor.

W&I 727.1
(Amended)
(Ch. 86) (AB 153)
(Effective 7/16/2021)

Prohibits a court from placing a juvenile ward in an out-of-state residential facility unless the court finds that all of these conditions are met:

1. The out-of-state residential facility is licensed or certified by an agency of that state;
2. the facility has been certified by the California State Department of Social Services or is exempt from certification;

continued

3. on and after July 1, 2021, the probation department has fulfilled its responsibilities as set forth in amended W&I 4096 and new W&I 16010.9 (e.g., a review of statewide placement options, efforts to avoid the need for out-of-state placement, verification that the services the ward needs are not available in California); and
4. the court has reviewed the documentation of any required assessment, technical assistance efforts, or recommendations, and finds that in-state facilities or programs are not available or are not adequate to meet the needs of the ward.

On and after July 1, 2022, prohibits any new placement of a minor by a county probation department in an out-of-state residential facility, except for placements described in Family C. 7911.1(h) (i.e., placements of specified emotionally disturbed children made pursuant to an individualized education program and placements of specified Indian children).

Requires the court to order that any minor placed out of state by a county probation department be returned to California no later than January 1, 2023, except for Family C. 7911.1(h) placements.

W&I 727.12
(New)
(Ch. 86) (AB 153)
(Effective 7/16/2021)

Requires the placement of a minor or non-minor dependent in a short-term residential therapeutic program made on and after October 1, 2021, to be reviewed by the court within 45 days of the start of the placement. Within five days of the placement, requires the probation officer to request that the juvenile court schedule a hearing to review the placement. Requires the probation officer to do a number of things, including the following:

1. Serve a copy of the hearing request on all parties to the delinquency proceedings;
2. prepare and submit a report;
3. serve a copy of the report on all parties no later than seven calendar days before the hearing.

Requires the court to consider the probation officer's report, determine whether a residential program provides the most effective and appropriate care in the least restrictive environment, approve or disapprove the placement, and make a finding of the basis for the placement determination.

continued

Requires the Judicial Council to amend or adopt Rules of Court, and develop or amend forms to implement this new section, including developing a procedure to enable the court to review the placement without a hearing.

W&I 730
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Permits a court to place a juvenile ward at the Pine Grove Youth Conservation Camp if a county has entered into a contract with the Division of Juvenile Justice (DJJ), if the ward meets the placement criteria, if DJJ has found the ward amenable, and if space and resources are available. Requires a probation department to receive approval from DJJ before transporting the ward to the Camp.

New W&I 1760.45 authorizes DJJ to enter into contracts with counties to operate the Pine Grove Youth Conservation Camp. (See W&I 1760.45, below, for more information.)

W&I 731
(New)
(Ch. 18) (SB 92)
(Effective 7/1/2021, until the final closure of the Division of Juvenile Justice)

Revives parts of W&I 731.

[The version of W&I 731 that was amended in 2020 by SB 823, became inoperative on July 1, 2021.]

Subdivision (a) is almost identical to subdivision (a)(4) of the previous version of W&I 731. It provides that a juvenile offender may be committed to the Division of Juvenile Justice (DJJ) if the ward has committed a W&I 707(b) offense or a sex offense listed in P.C. 290.008(c), but only if the minor has been the subject of a motion to transfer the case to adult court as provided in W&I 736.5(c) (which, pending the final closure of DJJ, permits an eligible ward to be committed to DJJ if a motion to transfer the case to adult court is filed).

Subdivision (b) is identical to subdivision (c) in the previous version of W&I 731, providing that a ward committed to DJJ shall not be confined in excess of the term of confinement set by the committing court and that the maximum term is the middle term of imprisonment that could be imposed on an adult convicted of the same offense. W&I 731 continues to *not* provide any explanation of how the middle term of imprisonment rule would apply in a multi-count case.

W&I 733.1
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Permits a juvenile offender convicted of a W&I 707(b) offense or a sex offense listed in P.C. 290.008(c) to be committed to the Division of Juvenile Justice (DJJ), or, upon

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final closure of DJJ to another state-funded facility, if the ward could have been committed to DJJ pursuant to W&I 731 (as that section read on January 1, 2021) and 733, 734, and 736.5.

Existing language in W&I 733.1 contains a general prohibition on DJJ commitments on and after July 1, 2021, but permits such commitments as provided in W&I 736.5(c) (see below), and for W&I 707(b) and P.C. 290.008(c) offenders.

W&I 736.5
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Requires a court, pending the final closure of the Division of Juvenile Justice (DJJ) to consider, as an alternative commitment to DJJ, placement in local programs, including those established as a result of the implementation of Chapter 337 of the Statutes of 2020.

[Chapter 337 was Senate Bill 823, pertaining to Juvenile Justice Realignment, which created in new W&I 1990–1995 a Juvenile Justice Realignment Block Grant Program to provide money for counties to house and supervise juvenile offenders at the local level.]

Adds that DJJ shall close on June 30, 2023.

Requires the Director of DJJ to develop a plan, by January 1, 2022, for the transfer of jurisdiction of offenders remaining at DJJ who are unable to discharge or otherwise move pursuant to law, prior to the final closure of DJJ on June 30, 2023.

W&I 779.5
(New)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Authorizes a court to modify a previous order committing a juvenile offender to a secure youth treatment facility.

Provides that a court committing a ward to a secure youth treatment facility as provided in W&I 875 may thereafter modify or set aside the order of commitment upon the written application of the ward or the probation department and upon a showing of good cause that the county or the commitment facility has failed, or is unable, to provide the ward with treatment, programming, and education that are consistent with the individual rehabilitation plan described in W&I 875(d), that the conditions under which the ward is confined are harmful to the ward, or that the juvenile justice goals of rehabilitation and community safety are no longer served by continued confinement of the ward in a secure youth treatment facility.

continued

Requires the court to notice a hearing in which it shall hear evidence from the ward, the probation department, and any behavioral health or other specialists having relevant information. Requires the court to make findings on the record, including findings as to the custodial and supervision status of the ward. Note that this new section makes no mention of prosecutors or their role in these types of hearings.

[For more on W&I 875, see below.]

W&I 790
W&I 791
(Amended)
(Ch. 603) (SB 383)
(Effective 1/1/2022)

Makes changes to the deferred entry of judgment program for minors.

Provides that if a minor is eligible for deferred entry of judgment (DEJ), and resides in a different county to which the case will be transferred, the court may adjudicate the case without determining suitability for deferred entry of judgment in order to enable the minor's county of residence (the receiving county) to make that determination.

Authorizes the receiving court, prior to determining the disposition of the case, to order the probation department to investigate and report on the minor's suitability for DEJ.

Eliminates from W&I 791 the paragraph that had required a prosecuting attorney's written notice to a minor about DEJ to include a statement that if the minor fails to comply with the terms of the program and judgment is entered, the offense may serve as a basis for a finding of unfitness pursuant to W&I 707(d), if the minor commits two subsequent felonies.

[Proposition 57 (November 2016) eliminated W&I 707(d), which had given prosecutors the discretion to directly file in adult court a juvenile case involving a serious or violent crime.]

[*Note*: Because DEJ (W&I 790–795) was created in Proposition 21 (March 2000), a two-thirds vote is required to amend it. This bill received over a two-thirds vote in both the Assembly (58-16) and the Senate (29-7).]

W&I 801
(New)
(Ch. 195) (AB 624)
(Effective 1/1/2022)

Provides that an order transferring a minor from juvenile court to criminal (adult) court is subject to "immediate appellate review" if a notice of appeal is filed within 30 days of the transfer order. Provides that an appeal of a transfer order cannot be heard on appeal from the judgment of conviction.

Requires the court, upon request of the minor, to stay the criminal court proceedings until a final determination of the transfer appeal.

Provides that the appeal shall have precedence and must be determined as soon as practicable after notice of appeal is filed.

Requires the Judicial Council to adopt rules of court to ensure the following:

1. That juvenile courts advise minors of the right to appeal, the necessary steps for taking an appeal, and the right to appointment of counsel if the minor is not able to retain counsel;
2. the prompt preparation and transmittal of the record from the superior court to the appellate court; and
3. that adequate time requirements for counsel and court personnel exist to implement the objectives of this section.

Provides that "It is the intent of the Legislature that this section provides for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction."

[The legislative history of the bill notes that W&I 800 does not provide for the right to appeal a transfer order and that in the case of *People v. Wong* (1976) 18 Cal.3d 698, 714, the California Supreme Court ruled that a challenge to an order certifying a minor to adult court must be by way of extraordinary writ in collateral proceedings brought before trial begins.]

W&I 875
W&I 875.5
W&I 876
(New)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Creates new Article 23.5 in Chapter 2 of Part 1 of Division 2 of the Welfare & Institutions Code, entitled "Secure Youth Treatment Facilities."

Permits a court to order that a specified ward who is 14 years of age or older be committed to a secure youth treatment facility.

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W&I 875

Eligibility for Secure Confinement and Court Findings

Permits a court to order a juvenile age 14 or older who has been adjudicated a ward of the court for a W&I 707(b) offense to be committed to a secure youth treatment facility, if the W&I 707(b) offense is the most recent offense for which the juvenile has been adjudicated, and if the court has made a finding on the record that a less restrictive, alternative disposition for the ward is not suitable. In determining whether a less restrictive alternative is not suitable, requires the court to consider all relevant and material evidence, including the recommendations of counsel, the probation department, and any other agency or individual designated by the court to advise on the appropriate disposition.

Requires the court to also make this determination based on all of the following criteria:

1. The severity of the offense or offenses for which the ward has been most recently adjudicated, including their role in the offense, their behavior, and harm done to victims;
2. the ward's previous delinquent history, including the adequacy and success of previous attempts by the juvenile court to rehabilitate the ward;
3. whether the programming, treatment, and education offered and provided in a secure youth treatment facility is appropriate to meet the treatment and security needs of the ward;
4. whether the goals of rehabilitation and community safety can be met by assigning the ward to an alternative, less restrictive disposition that is available to the court; and
5. the ward's age, developmental maturity, mental and emotional health, sexual orientation, gender identity and expression, and any disabilities or special needs affecting the safety or suitability of committing the ward to a term of confinement in a secure facility.

Length of Confinement

Requires the court to set a baseline term of confinement that is based on the most serious offense the ward was adjudicated for. Requires the Judicial Council, by July 1, 2023, to develop a matrix of offense-based classifications to be applied by juvenile courts in all counties in setting baseline confinement terms. Until this matrix is adopted, juvenile courts are required to use the discharge consideration date guidelines applied by DJJ prior to its closure and as set forth in Sections 30807 to 30813 of Title 9 of the California Code of Regulations.

continued

Requires the court to also set a maximum term of confinement. The maximum term cannot exceed the middle term of imprisonment that could be imposed on an adult convicted of the same offense. Prohibits a ward from being held in secure confinement beyond age 23, or two years from the date of the commitment, whichever occurs later. But if a ward would have faced a sentence of seven years or more in adult court, he or she may be held until age 25, or two years from the date of commitment, whichever occurs later.

Court Reviews, Individual Rehabilitation Plans, and Discharge to Probation
Requires the court to receive and review an individual rehabilitation plan for the ward, to hold progress review hearings at least once every six months, and to hold a probation discharge hearing at the end of the baseline confinement term. At such a hearing the ward must either be released on probation, or, if the court finds that the ward constitutes a "substantial risk of imminent harm to others in the community," the ward may be retained in custody in a secure youth treatment facility for up to one additional year.

If a ward is discharged to probation supervision, the court must determine the conditions of probation and periodically review the ward's progress. If the ward has "failed materially to comply" with the reasonable orders of probation, the court may order the ward to be returned to a juvenile facility or to a less restrictive program for up to a specified period of time.

Upon a motion by a probation department or by a ward, the court may order the ward transferred from a secure youth treatment facility to a less restrictive program such as a halfway house, camp, ranch, community residential program, or nonresidential service program.

Prohibits disciplinary infractions or other in-custody behaviors being used to extend a ward's confinement time beyond the baseline confinement term. Requires that misbehavior be addressed by alternative means, such as by a system of graduated sanctions.

Definition of Secure Youth Treatment Facility
Provides that a secure treatment facility is a facility operated or used by the county of commitment to provide programming, treatment, and education for wards. Permits stand-alone facilities and permits the use of a portion of an existing county juvenile facility, including a juvenile hall

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or probation camp. Permits a county to operate its own facility or to contract with another county to use its facility. Also permits a county to establish a regional secure youth treatment facility for one or more counties to use on a contract payment basis.

W&I 875.5
Intent to Enact Legislation for the Extended Detention of Dangerous Wards and Requirement that Stakeholders Develop Language for the Legislation
Sets forth the intent of the Legislature that W&I 1800–1803 (Extended Detention of Dangerous Persons) apply to wards who are committed to secure facilities and who are physically dangerous to the public, pending the development of a more specific process.

Sets forth the intent of the Legislature to enact legislation that would, effective July 1, 2022, extend the detention of physically dangerous wards.

Requires the Governor and the Legislature to work with stakeholders (e.g., Division of Juvenile Justice, Chief Probation Officers of California, the State Department of State Hospitals, the California State Association of Counties, advocacy organizations representing youth, and the Judicial Council) to develop language by July 1, 2021 to replace the procedures specified in W&I 876 (see below) with a commitment process that ensures that treatment capacity, legal protections, and court procedures are appropriate to successfully serve offenders realigned from DJJ to counties.

W&I 876
Procedure For Extending the Commitment of a Dangerous Ward
Provides that if a probation department determines that the discharge of a ward from a secure treatment facility at the time required by new W&I 875 would be physically dangerous to the public because of the ward's mental or physical condition, disorder, or other problem that causes the ward to have serious difficulty controlling his or her dangerous behavior, the probation department must request that the prosecuting attorney petition the court for an order directing that the ward remain subject to the control of the department beyond the scheduled discharge date.

Requires that the petition be filed at least 90 days before the scheduled discharge date and that it be accompanied by

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a written statement of the facts upon which the probation department bases its opinion that discharge would be physically dangerous to the public. Prohibits the court from dismissing a petition or denying an extension order merely because of technical defects in the application.

Requires a prosecuting attorney to promptly notify the probation department of a decision not to file a petition.

The Hearing
If a court determines that the petition, on its face, supports a finding of probable cause, the court must hold a hearing. Requires the court to notify the offender about the hearing, but says nothing about notifying the probation department or the district attorney. Requires the court to inform the offender of his or her right to compel the attendance of witnesses and to produce evidence. Provides that if the court determines at the hearing that there is not probable cause to believe that discharge would be physically dangerous to the public, the petition must be dismissed and the offender must be discharged pursuant to W&I 875. If there is probable cause, the court must order that a trial be held.

The Trial
Requires a jury trial on the issue of dangerousness unless both the offender and the prosecutor waive a jury trial. If trial is by jury and the offender does not waive time, requires that a jury be summoned and be in attendance no fewer than four days and no more than 30 days, from the date that probable cause was found. To be found dangerous, the standard of proof is proof beyond a reasonable doubt, and the jury verdict must be unanimous.

When the Offender Is Found to Be Physically Dangerous to the Public
If an offender is found to be dangerous after a jury or court trial, a new application for continued detention must be filed within two years if continued detention is deemed necessary. Provides that "[t]hese applications may be repeated at intervals as often as in the opinion of the department may be necessary for the protection of the public, except that the court shall have the power, in order to protect other persons in the custody of probation to refer the person for evaluation for civil commitment or to transfer the custody of any person over 25 years of age to the county adult probation authorities for placement in an appropriate institution."

continued

Appeals
Provides that an order of the court made pursuant to W&I 876 is appealable by the offender in the same manner as judgment in a criminal case. Provides that an appellate court may affirm the order of the lower court, modify it, or reverse it and order the appellant to be discharged. Provides that pending appeal, the appellant remains under the control of the probation department.

W&I 1731.5
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Permits a court, until July 1, 2021, to order an offender who is under age 18 and who is being sentenced to state prison, to be housed at the Division of Juvenile Justice (DJJ).

Permits an offender who is housed at DJJ and who will finish his or her period of incarceration before age 25, to continue to be housed at DJJ until the period of incarceration is completed or until final closure of DJJ.

W&I 1731.6
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Permits a court, until July 1, 2021, to commit an offender to the Division of Juvenile Justice (DJJ), for up to 90 days for observation and diagnosis.

Makes a number of technical amendments by replacing obsolete references to the Youth Authority with references to the Division of Juvenile Justice.

W&I 1752.1
W&I 1752.15
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Prohibits the Division of Juvenile Justice from accepting any new cases from a county on and after July 1, 2021.

[W&I 1752.1 applies to the temporary detention of offenders for diagnosis and treatment services. W&I 1752.15 applies to temporary emergency detention facilities for offenders under age 18.]

W&I 1760.45
(New)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Authorizes the DJJ to enter into contracts with counties to operate the Pine Grove Youth Conservation Camp, which the Legislature intends to remain open through a state-local partnership or other management arrangement, to train youth offenders in wildland firefighting skills.

Pursuant to an amendment to W&I 730, a court is permitted to place a juvenile ward at the Pine Grove Youth Conservation Camp if a county has entered into a contract

continued

with DJJ, if the ward meets the placement criteria, if DJJ has found the ward amenable, and if space and resources are available.

Permits DJJ to contract with one or more counties to furnish training, rehabilitation programs, and necessary services at Pine Grove for offenders age 18 or older who are under the jurisdiction of the juvenile court and supervision of a county probation department, following adjudication under W&I 602 for a felony offense.

Provides that the placement of a youth at Pine Grove shall not be considered a commitment to DJJ.

Requires DJJ to establish eligibility criteria and assess individual amenability for the initial and continued placement at Pine Grove.

W&I 16010.9
(New)
(Ch. 86) (AB 153)
(Effective 7/16/2021)

Sets forth the Legislature's intent to restrict the use of out-of-state residential facilities by county placing agencies, to instances in which all in-state placements and services that meet the needs of the minor have been exhausted and an individualized assessment of the needs of the child, minor, or non-minor dependent in relation to an identified out-of-state residential facility has been conducted. Permits placement in an out-of-state residential facility only after the facility has been certified by the State Department of Social Services, unless the placement is exempt from certification.

Details what a "county placing agency" (e.g., a probation department) must do before seeking certification of an out-of-state residential facility, including the following:

1. Review placement options in California;
2. document efforts to avoid the need for placement out of state; and
3. secure documentation of a recommendation by a county multidisciplinary team that verifies the out-of-state program provides the services the child needs and that these services are not available in California.

Labor Code

Labor C. 432.7
(Amended)
(Ch. 158) (AB 1480)
(Effective 1/1/2022)

Permits a criminal justice agency to obtain specified arrest or detention information about non-sworn employees, even if the arrest or detention did not result in a conviction, if the duties of the non-sworn employee relate to the collection or analysis of evidence or property; to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or to the collection, storage, dissemination, or usage of criminal offender record information.

Limits the arrest or detention information that may be obtained to violent felonies (P.C. 667.5(c)), serious felonies (P.C. 1192.7(c)), and crimes involving dishonesty or obstruction of legal processes, including, but not limited to, theft, embezzlement, fraud, extortion, falsifying evidence, falsifying or forging official documents, perjury, bribery, and influencing, intimidating, or threatening witnesses.

[Existing Labor C. 432.7 prohibits a public or private employer from asking a job applicant about an arrest or detention that did not result in a conviction, or about participation in a diversion program, or about any conviction that has been judicially dismissed (e.g., pursuant to P.C. 1203.4) or sealed. An exception to this prohibition is persons applying for jobs, or already employed, as peace officers. This bill adds specified already-employed non-sworn members of a criminal justice agency so that law enforcement agencies can seek information about arrests and detentions not resulting in convictions, throughout the career of the non-sworn member. This bill also amends existing P.C. 13203 to add non-sworn employees of a criminal justice agency and applicants for a non-sworn position, to those persons (peace officer employees and applicants for a peace officer position) for whom a criminal justice agency may release arrest and detention information, and/or diversion program information, to a governmental agency employer, even if the person was not convicted.]

Military & Veterans Code

Mil. & Vet. C. 58
(Amended)
(Ch. 183) (SB 352)
(Effective 1/1/2022)

Adds sexual harassment to this section that requires the Military Department to report annually to the Governor, the Legislature, the Attorney General, and U.S. Attorneys in California about the policies, procedures, and processes in place to prevent and respond to sexual assault, and report specified information about sexual assaults involving service members. Sexual harassment policies and procedures, and incidents, must now be included in the report.

Requires the Military Department to make this information available on its public internet website in the form of aggregated statistical data.

Mil. & Vet. C. 392
(Amended)
(Ch. 183) (SB 352)
(Effective 1/1/2022)

Adds that members of the militia in the active service of California are liable civilly and/or criminally for acts done by them outside the performance of their military duty, including, but not limited to, sexual assault and sexual harassment.

Continues to provide that actively-serving militia members are not liable civilly or criminally for any act done in the performance of their duties.

Mil. & Vet. C. 475
(New)
(Ch. 183) (SB 352)
(Effective 1/1/2022)

Makes sexual harassment a stand-alone offense by providing that any member of California's active militia who has been lawfully ordered to any type of state duty or any type of duty pursuant to Title 32 of the United States Code (National Guard) who is guilty of sexual harassment may be punished pursuant to Mil. & Vet. C. 450.1, or court-martialed. Existing Mil. & Vet. C. 450.1 specifies a variety of punishments, including suspension from duty, a fine, arrest in quarters, detention of pay, correctional custody, reduction in pay grade, and extra duties.

Provides that nothing in new Mil. & Vet. C. 475 precludes a civilian authority (e.g., a district attorney) from exercising its jurisdiction over any act or omission that violates any local, state, or federal law.

Defines "sexual harassment" as an unwelcome sexual advance, a request for sexual favors, or deliberate or

continued

repeated offensive comments or gestures of a sexual nature, towards, from, or in the presence of a person or persons, if any of the following apply:

1. Submission to the conduct was made either explicitly or implicitly a term or condition of a person's job, pay, or career;
2. submission to or rejection of the conduct by a person was used, or threatened to be used, as a basis for career or employment decisions affecting that person; or
3. the conduct had the purpose or effect of unreasonably interfering with any person's work performance or created an intimidating, hostile, or offensive working environment for any person, and was so severe or pervasive that a reasonable person or a reasonable victim would have perceived that the work environment was hostile or offensive.

[Uncodified Section One of the bill sets forth the Legislature's findings and declarations that sexual harassment is detrimental to good order and discipline within the military, erodes operational readiness, and is in direct conflict with the core values of the Department of Defense of duty, integrity, ethics, honor, courage, and loyalty.]

Mil. & Vet. C. 999.9
(Amended)
(Ch. 756) (AB 1574)
(Effective 1/1/2022)

Amends the Disabled Veteran Business Enterprise Program to authorize a district attorney, a city attorney, a county counsel, or the Attorney General to bring a civil action for a violation specified in existing subdivision (a)(6): Knowingly and with intent to defraud, fraudulently representing that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract. Provides for a civil penalty of at least $10,000 but not more than $30,000 for a first violation, and at least $30,000 but not more than $50,000 for each subsequent violation. Also provides that the violator is liable for all costs and attorney's fees incurred by the entity that brings the action.

Prohibits a district attorney, county counsel, or city attorney from bringing an action for a civil penalty if the Department of General Services has concluded an administrative action for the same violation.

continued

Requires a district attorney, county counsel, city attorney, and the Attorney General to notify the Department of General Services before commencing a civil action.

Continues to provide that a violation of this section is a misdemeanor crime punishable by up to six months in jail and/or by a fine of up to $1,000 and subject to a civil penalty.

[This bill makes the same amendments to Gov't C. 14842.5, which is in the Small Business Procurement and Contract Act. See the Government Code section of this digest for more information.]

New Felonies

Elections C. 18541
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Expands the list of felony crimes prohibiting dissuading another person from voting, by adding these crimes:

1. Obstructing ingress, egress, or parking, within 100 feet of a polling place, elections official's office, election satellite location, or curbside voting area.

2. Soliciting a vote, speaking to a voter about marking the voter's ballot, or disseminating visible or audible electioneering information, with the intent of dissuading another person from voting and within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot.

Continues to provide that a violation is punishable in the state prison or by up to 12 months in jail.

Elections C. 18568
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Adds the new felony crime of displaying a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Provides that evidence of the intent to deceive may include using the word "official" on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an election official.

Continues to prohibit conduct such as changing or destroying a ballot, taking ballots from a ballot container, fraudulently adding ballots, and destroying a poll list or ballot container. Continues to provide that the crimes in this section are punishable pursuant to P.C. 1170(h) by 16 months, two years, or three years in jail and/or by a fine of up to $1,000.

P.C. 487m
(New)
(Ch. 325) (AB 1003)
(Effective 1/1/2022)

Creates the new felony crime of "intentional theft of wages" in an amount greater than $950 from one employee, or $2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period.

Provides that this crime is punishable as grand theft. Therefore, pursuant to existing P.C. 489, this new crime is

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punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h), or, by up to one year in jail.

Defines "theft of wages" as the intentional deprivation of wages as defined in Labor C. 200 (all amounts for labor performed by employees of every description), or gratuities as defined in Labor C. 350 (money paid, given to, or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or goods, food, or drink sold or served to the patron), or benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, or other compensation is due to the employee under law.

Provides that "employee" also includes an independent contractor and that "employer" includes the hiring entity of an independent contractor.

Provides that the wages, gratuities, benefits, or other compensation that are the subject of a prosecution under this new section may be recovered as restitution in accordance with existing P.C. 1202.4 and 1203.1.

Provides that this new section does *not* prohibit the employee or the Labor Commissioner from commencing a civil action to seek remedies provided for under the Labor Code.

Water C. 13499.2
(New)
(Ch. 187) (SB 776)
(Effective 1/1/2022)

Creates the new felony crime of knowingly making or causing to be made a false statement, material representation, or false certification in any submittal to the State Water Resources Control Board relating to an agreement for financial assistance.

Punishable by 16 months, two years, or three years in state prison or up to one year in county jail, and/or by a fine of up to $10,000.

Provides that a district attorney or the Attorney General, upon request of the state board, may bring an action in superior court to impose the criminal penalty.

[This bill makes a number of amendments relating to water, including creating Chapter 6.7 in Division 7 of the Water Code entitled "Cost Recovery, Enforcement, and

continued

Administration" covering new Water C. 13490–13499.4. Among other things, the bill consolidates the administrative enforcement authority available to the State Water Resources Control Board to enforce the terms, conditions, and requirements of its financial assistance program as it relates to the Safe and Affordable Drinking Water Program (SB 200, 2019 Laws, H&S 116765–116772). Pursuant to existing law, the Board expends money from the Safe and Affordable Drinking Water Fund to help water systems throughout California provide an adequate and affordable supply of drinking water. New Water C. 13490–13499.4 contain the above new felony crime and provisions authorizing the Board to recover the financial assistance provided to a recipient that is not expended for authorized purposes, to impose various administrative civil penalties, and to recover its costs in enforcing financial assistance agreements. Also requires the Attorney General, upon request of the Board, to bring an action in superior court to recover the Board's costs and to impose the civil penalty or civil liability.]

New Misdemeanors

B&P 7156
(Amended)
(Ch. 249) (SB 757)
(Effective 1/1/2022)

Adds an additional misdemeanor crime in new subdivision (c): A home improvement salesperson recommending, selecting, or guiding an owner or tenant in the selection of a contractor if the contractor has not notified the Contractors State License Board, as required by existing B&P 7154(a), that the salesperson is working for the contractor. Continues to provide that any violation of B&P 7156 is also a cause for disciplinary action.

Elections C. 18370
(Amended)
(Ch. 318) (SB 35)
(Effective 1/1/2022)

Expands the list of misdemeanor election crimes to include these:

1. Soliciting a vote, circulating a petition, or electioneering within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot.

2. Soliciting a vote, speaking to a voter about marking the voter's ballot, or disseminating visible or audible electioneering information, to a person on election day or at any time the voter is casting a ballot, within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot.

Fish & Game C. 2024
(New)
(Ch. 370) (AB 223)
(Effective 1/1/2022)

Creates two new misdemeanor crimes in order to combat dudleya poaching:

1. Uprooting, removing, harvesting, or cutting dudleya from land owned by the state or a local government, or from private property without written permission from the landowner.

2. Selling, offering for sale, possessing with the intent to sell, transporting or exporting for sale, or purchasing dudleya that was unlawfully uprooted, removed, harvested, or cut.

Defines "dudleya" as a succulent plant belonging to the genus Dudleya and commonly referred to as "live-forevers," that is native to California and grows in natural habitats. Provides that dudleya poaching has increased dramatically because it has become popular in many Southeast Asian countries, where a single plant can sell for up to $1,000.

continued

Provides that a first conviction where the value of the dudleya is $250 or more, is punishable by up to six months in jail and/or by a fine of between $5,000 and $50,000. Provides that a second or subsequent conviction is punishable by up to six months in jail and/or by a fine of between $10,000 and $500,000.

Provides that upon conviction, any seized dudleya shall be forfeited to the Department of Fish and Wildlife.

Permits the court to order the defendant to pay the cost of replanting any dudleya that was forfeited.

Provides for a three-year statute of limitations, by providing that notwithstanding P.C. 802, prosecution must commence within three years after the commission of the offense.

P.C. 423.1
P.C. 423.2
P.C. 423.3
(Amended)
(Ch. 191) (AB 1356)
(Effective 1/1/2022)

Makes several amendments to the California Freedom of Access to Clinic and Church Entrances Act (FACE, P.C. 423–423.6), which protects abortion clinics, providers, and patients.

Amends P.C. 423.2 to add two new misdemeanor crimes in subdivisions (g) and (h):

1. Intentionally videotaping, filming, or recording, within 100 feet of or within, a reproductive health services facility (e.g., an abortion clinic), a reproductive health services patient, provider, or assistant, without that person's consent and with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causing the person to be intimidated.

2. Intentionally disclosing or distributing a video, film, or recording knowing it was obtained in violation of (1) above, with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causing the person to be intimidated.

For both of these new misdemeanor crimes, provides that they do *not* apply to a person described in California Constitution Article I, Section 2(b) (i.e., a publisher, editor, or

continued

news reporter connected with or employed by a newspaper, magazine, radio station, or television station.)

Both are punishable by up to one year in jail and/or by a fine of up to $10,000 for a first violation, and by up to one year in jail and/or by a fine of up to $25,000 for a second or subsequent violation.

[P.C. 423.2 continues to include these misdemeanor crimes: injuring, intimidating, or interfering with a person or entity because the person or entity is a reproductive health services patient, provider, or assistant; injuring, intimidating, or interfering with a person lawfully exercising the First Amendment right of religious freedom at a place of worship; damaging or destroying the property of a person or entity because the person or entity is a reproductive health services patient, provider, assistant, or facility; and damaging or destroying the property of a place of religious worship.]

P.C. 594.39
(New)
(Ch. 737) (SB 742)
(Effective 10/8/2021)

Creates the new misdemeanor crime of knowingly approaching within 30 feet of a person while that person is within 100 feet of the entrance or exit to a vaccination site and is seeking to enter or exit the site, or any occupied motor vehicle seeking entry or exit to a vaccination site, for the purpose of obstructing, injuring, harassing, intimidating, or interfering with that person or vehicle occupant. Punishable by up to six months in jail and/or by a fine of up to $1,000. [This new crime is worded awkwardly and it is not clear whether the 30-foot and/or 100-foot requirements apply if an occupied motor vehicle is involved, but the definition of "harassing" indicates that the 30-foot requirement applies to an occupied vehicle.]

Defines six terms:

1. "Harassing" is knowingly approaching, without consent, within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with, another person in a public way or on a sidewalk area.

2. "Interfering With" is restricting a person's freedom of movement.

continued

3. "Intimidating" is making a true threat directed to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

4. "Obstructing" is rendering ingress to or egress from a vaccination site, or rendering passage to or from a vaccination site, unreasonably difficult or hazardous.

5. "True threat" is a statement in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group of persons regardless of whether the person actually intends to act on the threat.

6. "Vaccinate Site" is the physical location where vaccination services are provided, including, but not limited to, a hospital, physician's office, clinic, or any retail space or pop-up location made available for vaccination services.

Provides that lawful picketing arising out of a labor dispute is not a violation of this new crime.

[There are concerns about the constitutionality of this bill, and lawsuits have already been filed on First Amendment grounds.]

Penal Code

P.C. 112
P.C. 113
P.C. 114
(Amended)
(Ch. 296) (AB 1096)
(Effective 1/1/2022)

Makes a non-substantive amendment by changing the phrase "alien status" to "status for immigration purposes" in these crimes relating to the manufacturing, sale, distribution, or use of false documents.

The first part of amended P.C. 112 now reads "Any person who manufactures or sells any false government document with the intent to conceal the true citizenship or resident status for immigration purposes of another person is guilty of a misdemeanor …."

The first part of amended P.C. 113 now reads "Any person who manufactures, distributes, or sells false documents to conceal the true citizenship or resident status for immigration purposes of another person is guilty of a felony. …"

The first part of amended P.C. 114 now reads "Any person who uses false documents to conceal their true citizenship or resident status for immigration purposes is guilty of a felony …."

[This bill also amends a number of other sections in the Business & Professions Code, Civil Code, Education Code, Government Code, Health & Safety Code, Insurance Code, Labor Code, Military & Veterans Code, Penal Code, Probate Code, Public Contract Code, Public Resources Code, Unemployment Insurance Code, Vehicle Code, and Welfare & Institutions Code.]

[Uncodified Section One of this bill states that the Legislature's intent is to make only non-substantive changes to these sections by removing "the dehumanizing term 'alien' from all California code sections."]

P.C. 118.1
(Repealed & Added)
(Ch. 267) (AB 750)
(Effective 1/1/2022)

Repeals the existing felony crime of a peace officer filing a false report, which prohibits a peace officer from intentionally making a statement in a report about a material matter that the officer knows to be false.

Adds a new version of P.C. 118.1 to expand this crime to also apply to an intentional and false material statement made by one peace officer to another peace officer, and the statement is included in a peace officer report. Provides that P.C. 118.1

continued

does not apply to the officer who writes the report and who includes statements from another officer in the report, unless the writing officer knows that the statement from the other officer is false and includes the false statement in the report in order to present it as true.

Here is how P.C. 118.1 will read as of January 1, 2022:

> (a) Every peace officer who, in their capacity as a peace officer, knowingly and intentionally makes, or causes to be made, any material statement in a peace officer report, or to another peace officer and the statement is included in a peace officer report, regarding the commission or investigation of any crime, knowing the statement to be false, is guilty of filing a false report, punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years.
> (b) This section does not apply to a peace officer writing or making a peace officer report, with regard to a false statement that the peace officer included in the report that is attributed to any other person, unless the peace officer writing or making the report knows the statement to be false and is including the statement to present the statement as being true.

[It is not clear why subdivision (b) uses the phrase "attributed to any other person," instead of "attributed to another peace officer," since the crime as described in subdivision (a) specifically applies to a peace officer who makes a knowingly false statement in a report or who knowingly includes in a report a false statement from another peace officer, not a false statement from "any other person."]

The new version of P.C. 118.1 contains the same punishment as the previous version: one, two, or three years in state prison, or up to one year in county jail.

P.C. 166
(Amended)
(Ch. 704) (AB 764)
(Effective 1/1/2022)

Amends subdivision (b)(1) to add contacting a person by social media, electronic communication, or electronic communication device to the methods of communication (telephone, mail, or directly) that elevate punishment for contempt of court from a maximum of six months in jail to a maximum of one year in jail when an offender violates P.C. 166(a)(4) (willful disobedience of a court order) and

continued

has previously been convicted of a violation of P.C. 646.9 (stalking). Also changes the fine that may be imposed *from* a fine of exactly $5,000 to a fine of *no more than* $5,000.

Defines "social media" as having the same definition as in P.C. 632.01. P.C. 632.01 (a) defines it as an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

Defines "electronic communication" as having the same definition as in P.C. 646.9 (which provides that it has the same definition as in Subsection 12 of Section 2510 of Title 18 of the United States Code). 18 U.SC. 2510, subsection 12 defines "electronic communication" as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does *not* include a wire or oral communication, a communication made through a tone-only paging device, a communication from a tracking device, or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

Defines "electronic communication device" as having the same definition as in P.C. 646.9. P.C. 646.9(h) defines it as including, but not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers.

Makes a non-substantive terminology change from "battered women's shelter" to "domestic violence shelter-based program."

P.C. 171c
(Amended)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Expands to the state office building located at 1021 O Street in the City of Sacramento, the felony crime of bringing a loaded firearm into, or possessing a loaded firearm within, specified locations in Sacramento. Continues to also specify these locations: The State Capitol and its grounds, legislative offices, the Governor's office, and Senate and Assembly committee rooms.

Expands to the state office building located at 1021 O Street in the City of Sacramento, the misdemeanor crime

continued

of bringing or possessing a specified weapon into or on the grounds of the places specified above.

Continues to specify these weapons: A firearm; deadly weapon such as a switchblade knife; metal knuckles, cane gun, shuriken, or any other weapon listed in existing P.C. 16590; knife with a fixed blade of more than four inches; unauthorized tear gas; stun gun; ammunition; BB or pellet gun; or any explosive.

P.C. 186.22
(Amended)
(Ch. 699) (AB 333)
(Effective 1/1/2022)

Part of the "STEP Forward Act of 2021."

[This bill also creates new P.C. 1109 to require that gang enhancements charged under P.C. 186.22(b) or (d) be tried separately from the underlying charges if the defense requests this. New P.C. 1109 also provides that if a defendant is charged with P.C. 186.22(a) (the crime of actively participating in a criminal street gang), this count must be tried separately from all other counts that do not require gang evidence as an element of the crime, and may be tried in the same proceeding with a P.C. 186.22(b) or (d) enhancement. See P.C. 1109, below, for more information.]

Overview
P.C. 186.22 is amended in several ways to reduce and limit the ability of prosecutors to successfully prosecute gang crimes:

1. Changes the definition of "pattern of criminal gang activity" in order to make it more difficult to prove;
2. removes a number of offenses from the list of those that may qualify as a pattern of criminal gang activity;
3. prohibits the currently charged offense from being used to establish a pattern of criminal gang activity;
4. changes the definition of "criminal street gang" to require proof that a gang is an *organized* association;
5. where it must be proved that conduct promoted, furthered, assisted, or benefited a criminal street gang, requires that the benefit, promotion, furthering, or assisting provide a common benefit that is more than reputational.

Changes the Definition of "Pattern of Criminal Gang Activity" to Require that Any Benefit to the Gang Be More Than Reputational, and Prohibits the Currently Charged Offense From Being Used to Establish the Pattern
Redefines "pattern of criminal gang activity" as follows;

continued

new language shown in italics, deleted language shown with strikethrough:

> the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of, two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter, and the last of those offenses occurred within three years of the prior offense and *within three years of the date the current offense is alleged to have been committed*, the offenses were committed on separate occasions or by two or more *members* ~~persons~~, *the offenses commonly benefited a criminal street gang, and the common benefit of the offense is more than reputational*.

[Law enforcement pointed out that by requiring proof of a benefit that is more than reputational, typical reasons for gang-related crime such as rising up in the gang ranks or promoting the gang through fear, would not be enough to prove a benefit to the gang.]

Specifically provides that the currently charged offense cannot be used to establish the pattern of criminal gang activity.

Removes the Following Offenses From the List of Crimes That May Qualify as a Pattern of Criminal Gang Activity

1. Looting (P.C. 463)
2. Felony vandalism (P.C. 594(b)(1))
3. Felony theft of access card or account information (P.C. 484e)
4. Counterfeiting, designing, using, or attempting to use an access card (P.C. 484f)
5. Felony fraudulent use of an access card or account information (P.C. 484g)
6. Unlawful use of personal identifying information to obtain credit, goods, services, or medical information (P.C. 530.5)
7. Wrongfully obtaining Department of Motor Vehicles documentation (P.C. 529.7).

Changes the Definition of "Criminal Street Gang" to Require that it be Organized and to Eliminate Individual Action
Redefines "criminal street gang" as follows; new language shown in italics, deleted language shown with strikethrough:

> an ongoing, *organized* association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts enumerated in ~~paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of~~ subdivision (e),

continued

having a common name or common identifying sign or symbol, and whose members ~~individually or~~ collectively engage in, or have engaged in, a pattern of gang activity.

Proof That Conduct Benefited, Promoted, Furthered, or Assisted a Criminal Street Gang
Adds a new subdivision (g) to provide that as used in P.C. 186.20–186.36, to benefit, promote, further, or assist means to provide a common benefit to members of a gang where the common benefit is more than reputational.

Provides examples of a common benefit that are more than reputational: financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or the intimidation or silencing of a potential current or previous witness or informant.

[Law enforcement pointed out that by requiring proof of a benefit that is more than reputational, typical reasons for gang-related crime such as rising up in the gang ranks or promoting the gang through fear, would not be enough to prove a benefit to the gang.]

[There are several places in P.C. 186.22 that require proof of conduct that benefits, promotes, furthers, or assists a gang: P.C. 186.22(a) (active participation in a criminal street gang) requires willfully promoting, furthering, or assisting in felonious criminal conduct by members of the gang. P.C. 186.22(b)(1) (gang enhancements) and 186.22(b)(4) (indeterminate life sentence for specified gang crimes) and 186.22(d) (elevates to a felony a misdemeanor that is committed for gang purposes) all require the crime be committed for the benefit of, at direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members.]

[*Retroactivity*: These amendments will apply prospectively to every pending case on January 1, 2022, even if the crime was committed before 2022. The general rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3 and *People v. Brown* (2012) 54 Cal.4th 314, 319.). The exception to this rule is that when a new law mitigates punishment, it will apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740.) Based on how the courts have ruled the last few years on retroactivity issues such as the shortening of probation periods, the prohibition on transferring juvenile offenders

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age 14 and 15 to adult court, the elimination of almost all three-year H&S 11370.2 drug trafficking enhancements, the elimination of virtually all one-year P.C. 667.5(b) prison prior enhancements, and the granting of authority to the courts to strike P.C. 667(a) five-year priors and firearm enhancements (P.C. 12022.53 and 12022.5), the courts may rule that these amendments apply to every case not final on appeal as of January 1, 2022.]

[Uncodified Section Two of the bill contains a lengthy declaration by the Legislature attempting to justify reducing law enforcement's ability to combat, deter, and prosecute gang crime. The bill had significant bipartisan opposition in the Legislature. It passed by only one vote in the Assembly (41 yes votes) and got only 25 yes votes in the 40-member Senate.]

P.C. 236.14
(Amended)
(Ch. 193) (AB 262)
(Effective 1/1/2022)

Makes several changes to this section that provides for vacatur relief to a person who was arrested or convicted of a non-violent offense while he or she was a victim of human trafficking.

1. Requires that fines imposed as a result of the conviction that is the subject of a petition for relief be stayed while the vacatur petition is pending.

2. Requires the agencies that are ordered to seal and destroy records when a court grants vacatur relief, to seal and destroy records much faster—within one year of the date of arrest or within 90 days after the court order, whichever occurs later. (Agencies that are ordered to seal and destroy records include a law enforcement agency that arrested or participated in the arrest of the petitioner; a law enforcement agency that maintains records regarding the offense, such as a probation department or parole authority; and the Department of Justice (DOJ)).

3. Requires the court to provide the petitioner with a certified copy of the order for the sealing and destruction of arrest records. Requires the court to provide the petitioner and petitioner's attorney a copy of the form the court submits to any agency related to the sealing and destruction of arrest records. (It is not clear why these new provisions are written in terms of "arrest records" instead of arrest and conviction records.)

continued

4. Requires DOJ to notify the petitioner and petitioner's attorney that it has complied with the order to seal arrest records.

5. Instead of requiring that a petition for relief be heard "within a reasonable time" after the petitioner has ceased to be a victim of human trafficking, a petition may now be heard "at any time" after the petitioner has ceased to be a victim of human trafficking. Adds that the right to petition for relief does not expire with the passage of time.

6. Prohibits a court from refusing to hear a petition that is properly made, on the grounds that the petitioner still owes fines and fees, or on the grounds that the petitioner failed to meet the conditions of probation.

7. Provides that if the petition is not opposed, the petitioner may appear at all hearings by counsel. Provides that if the petition is opposed, the petitioner must appear in person unless the court finds that there is a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or other electronic means.

P.C. 236.15
(New)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Provides a procedure for vacatur relief when a person is arrested for or convicted of a non-violent offense (i.e., a non-P.C. 667.5(c) crime), committed while the person was a victim of intimate partner violence or sexual violence. This new section is almost identical to existing P.C. 236.14, which provides for arrest and conviction vacatur relief for victims of human trafficking.

New P.C. 236.15 applies to both adult and juvenile cases.

Overview
New P.C. 236.15 provides for vacating arrests and convictions, and the sealing and destruction of records. It applies to adult and juvenile offenses. "Non-violent offense" is defined as any offense not listed in P.C. 667.5(c). Thus, this new procedure applies to serious felonies and all misdemeanors, as well as non-serious/ non-violent felonies.

Burden of Proof
Requires an adult petitioner to establish by clear and convincing evidence that the arrest or conviction was the

continued

direct result of being a victim of intimate partner violence or sexual violence. Provides that if a juvenile offense is the subject of a petition, and if the petitioner establishes that the arrest or adjudication was the direct result of being a victim of intimate partner violence or sexual violence, there is a rebuttable presumption that the requirements for relief have been met.

The Petition
Requires that a petition be brought within a reasonable time after the defendant has ceased to be a victim of intimate partner violence or sexual violence, or within a reasonable time after the defendant has sought services for being such a victim, whichever occurs later.

Requires a petition to be submitted under the penalty of perjury and to describe the grounds and evidence that the defendant was a victim of intimate partner violence or sexual violence, and that the arrest or conviction was the direct result of being such a victim.

Requires the petition to be served on the local or state prosecutor that obtained the conviction. Provides that the prosecutor has 45 days to respond.

Provides that if no opposition to the petition is filed by a local or state prosecutor, the court must deem the petition unopposed and may grant relief.

The Hearing
Permits a court to consolidate into one hearing multiple convictions from different jurisdictions, but only if the prosecutorial agencies and the defendant agree.

Provides that the hearing may consist of testimony by the defendant, evidence and supporting documentation in support of the petition, and opposition evidence presented by the prosecutor.

Permits the defendant or the defendant's attorney to be excused from appearing in person if the court finds a compelling reason to permit the defendant to appear telephonically, via videoconference, or by other electronic means.

continued

The Granting of Relief
Authorizes the court to vacate a conviction or expunge an arrest if it finds all of the following:

1. The defendant was a victim of intimate partner violence or sexual violence at the time the non-violent crime was committed;
2. the commission of the crime was a direct result of being a victim of intimate partner violence or sexual violence;
3. the defendant is engaged in a good faith effort to distance himself or herself from the perpetrator of the harm; and
4. it is in the best interest of the defendant and in the interests of justice.

Provides that if the court issues an "order of vacatur" for a conviction (i.e., an order setting aside the conviction), it shall do all of the following:

1. Set forth a finding that the petitioner was a victim of intimate partner violence or sexual violence when the offense was committed;
2. set aside a verdict of guilty or the adjudication, and dismiss the accusation or information; and
3. notify the Department of Justice (DOJ) that the defendant was a victim of intimate partner violence or sexual violence when the crime was committed and that relief has been ordered.

Restitution
Permits relief even if a defendant still owes victim restitution. P.C. 236.15(i) provides that a defendant "shall not be relieved of any financial restitution order that directly benefits the victim of a non-violent crime, unless it has already been paid."

Additional Orders Required When Relief Is Granted
Requires the court, if it vacates a conviction or expunges an arrest, to also order the law enforcement agency having jurisdiction over the offense, DOJ, and the law enforcement agency that arrested the defendant, to seal and destroy their records of arrest, and to seal and destroy the court order itself that directs the sealing and destruction.

[Note that only arrest records are specifically required to be sealed and destroyed and that there is no mention of

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a district attorney's office, or the court, being required to destroy any records. However, subdivision (r) of P.C. 236.15 provides that "A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section." And P.C. 236.15(t)(2) includes in the definition of "vacate" that "all records in the case are sealed and destroyed."

Definition of "Vacate"
Provides that "vacate" means that an arrest, adjudication, or conviction is deemed not to have occurred and that all records in the case are sealed and destroyed.

Defendant May Deny the Arrest, Conviction, and Adjudication
Permits a defendant who obtains relief to "lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order."

If Relief Is Denied
Provides that if the court denies relief because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. Authorizes the court to state the reasons for denial in writing or on the record.

[This bill also amends P.C. 236.23 to expand the affirmative defense of being coerced to commit an offense as a result of being a human trafficking victim; adds new P.C. 236.24 to provide an affirmative defense of being coerced to commit an offense as a result of being a victim of intimate partner violence or sexual violence; adds P.C. 1016.7 to require prosecutors to consider several specified mitigating factors during plea negotiations; amends P.C. 1170(b) to require the imposition of the low term if the court finds that a specified mitigating factor contributed to the commission of the offense; and amends P.C. 1170(d)(1) to specify mitigating factors the court must consider when re-sentencing a defendant. (P.C. 1170(d)(1) is moved to new P.C. 1170.03 by AB 1540, a later chaptered bill.) For more information, see each of these entries in this section of the digest.]

P.C. 236.23
(Amended)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Expands to serious felonies (P.C. 1192.7(c)) the affirmative defense of being coerced to commit an offense as a direct result of being a human trafficking victim at the time of the offense and the person had a reasonable fear of harm.

continued

Previously, this defense was not available for serious felonies or violent felonies (P.C. 667.5(c)). Now the only disqualifying crime category is violent felonies.

Adds to the list of records that may be presented to establish the affirmative defense of coercion: Information contained in governmental agency reports that is relevant to the identification of a victim of human trafficking by a peace officer pursuant to P.C. 236.2, even if a peace officer did not make an identification pursuant to P.C. 236.2.

[Existing P.C. 236.2 requires a law enforcement agency to use due diligence to identify victims of human trafficking. It requires a peace officer who comes into contact with a person who has been deprived of personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating P.C. 647(a) (lewd act in public) or P.C. 647(b) (prostitution), or a victim of domestic violence or sexual assault, to consider whether specified indicators of human trafficking are present, such as trauma, fatigue, injury, being afraid to talk, being withdrawn, living and working in one place, owing a debt to an employer, and security measures being used to control who has contact with the person.]

[This bill also adds P.C. 236.15 to provide vacatur relief for victims of intimate partner violence and sexual violence; adds new P.C. 236.24 to provide an affirmative defense of being coerced to commit an offense as a result of being a victim of intimate partner violence or sexual violence; adds P.C. 1016.7 to require prosecutors to consider several specified mitigating factors during plea negotiations; amends P.C. 1170(b) to require the imposition of the low term if the court finds that a specified mitigating factor contributed to the commission of the offense; and amends P.C.1170(d)(1) to specify mitigating factors the court must consider when re-sentencing a defendant. (P.C. 1170(d)(1) is moved to new P.C. 1170.03 by AB 1540, a later chaptered bill.) For more information, see each of these entries in this section of the digest.]

P.C. 236.24
(New)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Establishes the affirmative defense of being coerced to commit a crime as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense, and the defendant had a reasonable

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fear of harm. This new section is modeled after, and is almost identical to, P.C. 236.23, which provides the affirmative defense of being coerced to commit a crime as a direct result of being a victim of human trafficking at the time of the offense.

Disqualifiers
Provides that this affirmative defense applies to all crimes except violent felonies (P.C. 667.5(c)).

Burden of Proof
Provides that a defendant has the burden of proof of establishing the affirmative defense by a preponderance of the evidence.

Documents are Admissible to Prove the Defendant's Status as a Victim of Intimate Partner Violence or Sexual Violence
Provides that the following may be presented to establish the affirmative defense:

1. Certified records of a court (federal, state, local, or tribal) or governmental agency documenting the defendant's status as a victim of intimate partner violence or sexual violence, including identification of a victim of intimate partner violence or sexual violence by a peace officer;
2. certified records of approval notices or enforcement certifications generated from federal immigration proceedings; or
3. information contained in governmental agency reports, which is relevant to the identification of a victim of intimate partner violence or sexual violence, even if the defendant was not then identified as a victim of intimate partner violence or sexual violence.

When the Affirmative Defense May Be Asserted
Permits the affirmative defense to be asserted at any time before the entry of a plea of guilty or nolo contendere, or before trial ends. Provides that if it is asserted before a preliminary hearing, it must be determined at the preliminary hearing if the defendant so requests. (By asserting the defense before a preliminary hearing or before pleading guilty, the determination of whether a defendant has met his or her burden of proof would be decided by a judge, and not a jury at trial.)

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The Relief a Defendant Is Entitled to if He or She Prevails on the Affirmative Defense

1. The sealing of all records pursuant to existing P.C. 851.86, except that sealed records may be accessed and used by law enforcement for subsequent investigatory purposes involving persons *other than* the defendant. (P.C. 851.86 is the sealing authority when a defendant is found factually innocent);
2. release from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement, courts, or other government employees that led to the charge shall be deemed not to have occurred; and
3. permission to state, in all circumstances, that he or she has never been arrested for, or charged with, the crime, including in response to questions on employment, housing, financial aid, or loan applications.

Prohibits the defendant from being denied employment, housing, financial aid, welfare, or a loan based on the arrest or charge, or based on the failure to disclose information about it.

Prohibits charging or convicting the defendant of perjury or giving a false statement, for failing to disclose or acknowledge the charge, arrest, indictment, or trial.

Juveniles
Provides that this affirmative defense applies to W&I 602 proceedings in juvenile court and that if a juvenile court finds the affirmative defense has been established, the court must dismiss the case and order the records sealed pursuant to W&I 786. (W&I 786 permits a sealed record to be accessed, inspected, and utilized under specified circumstances.)

[This bill also adds P.C. 236.15 to provide vacatur relief for victims of intimate partner violence and sexual violence; amends P.C. 236.23 to expand the affirmative defense of being coerced to commit an offense as a result of being a human trafficking victim; adds P.C. 1016.7 to require prosecutors to consider several specified mitigating factors during plea negotiations; amends P.C. 1170(b) to require the imposition of the low term if the court finds that a specified mitigating factor contributed to the commission of the offense; and amends P.C. 1170(d)(1) to specify mitigating

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factors the court must consider when re-sentencing a defendant. (P.C. 1170(d)(1) is moved to new P.C. 1170.03 by AB 1540, a later chaptered bill.) For more information, see each of these entries in this section of the digest.]

P.C. 261
(Amended)
P.C. 262
(Repealed)
(Ch. 626) (AB 1171)
(Effective 1/1/2022)

Repeals P.C. 262 (rape of a spouse) in its entirety and incorporates rape of a spouse into the various subdivisions of P.C. 261, except for P.C. 261(a)(1), which is the crime of raping a person who is incapable of giving legal consent because of a mental disorder or developmental or physical disability.

All other types of rape in P.C. 261(a)(2)–(7) apply regardless of whether the perpetrator and victim are spouses. P.C. 261(a)(1) does not apply where the perpetrator and victim are spouses, but it does provide that nothing in 261(a)(1) precludes the prosecution of a spouse who commits the act from being prosecuted under any other paragraph in 261(a), or under any other law.

P.C. 261(a) previously provided, "Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances …."

P.C. 261(a) now provides, "Rape is an act of sexual intercourse accomplished under any of the following circumstances …."

With the incorporation of P.C. 262 into P.C. 261, provisions that previously applied only to P.C. 261 will now also apply to rape of a spouse. One example is the mandatory probation ineligibility provisions in P.C. 1203.065(a) for P.C. 261(a)(2), 261(a)(3), 261(a)(4), and 261(a)(6).

[This bill makes conforming amendments to numerous other sections in the Business & Professions Code, Civil Code, Evidence Code, Family Code, Government Code, Penal Code, Public Resources Code, Vehicle Code, and Welfare & Institutions Code to reflect the repeal of P.C. 262 and its incorporation into P.C. 261. Many of the amendments change references *from* "262" *to* "former Section 262," or simply delete the reference to P.C. 262.]

P.C. 409.5
(Amended)
(Ch. 609) (AB 1103)
(Effective 1/1/2022)

Adds a cross-reference to new Food & Ag. Code 2350, to provide that a person holding a valid livestock pass identification document shall not be prevented from entering areas closed during a disaster, unless a peace officer finds that the disaster is of such a nature that it would be unsafe to enter or that the person would interfere with the disaster response.

[P.C. 409.5 authorizes law enforcement to close areas when a menace to public health or safety is caused by a natural disaster or other type of disaster.]

[This bill also creates new Chapter 4 in Division 2 of the Food & Agricultural Code, entitled "Livestock Pass Program." New Food & Ag. Code 2350 authorizes counties to establish a livestock pass program for the purpose of issuing identification documents that would grant a livestock producer access to his or her ranch property during or after a disaster. The bill also creates new H&S 13105.6 to require the Fire Marshal to develop a certification program to educate livestock producers on fire behavior, communications during a disaster, and incident command structure.]

P.C. 409.7
(New)
(Ch. 759) (SB 98)
(Effective 1/1/2022)

Allows members of the press to enter areas that have been closed by law enforcement due to a demonstration, march, protest, or rally, and prohibits members of the press from being cited for the failure to disperse, for a curfew violation, or for P.C. 148(a)(1) (resisting, delaying, or obstructing a peace officer).

Provides that if peace officers close the area surrounding a command post, or establish a police line or rolling closure at a demonstration, march, protest, or rally where people are engaging in activity protected by the First Amendment, a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the closed area.

Prohibits a law enforcement officer from intentionally assaulting, interfering with, or obstructing an authorized news representative who is gathering, receiving, or processing information for communication to the public.

continued

Prohibits law enforcement from citing an authorized news representative who is in a closed area, for failing to disperse, violating curfew, or committing a violation of P.C. 148(a)(1).

Provides that if a news representative is detained by law enforcement, the representative must be permitted to contact "a supervisory officer" immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

Provides that this new section does *not* prevent a law enforcement officer from enforcing other applicable laws if the news representative engages in unlawful activity.

A violation of this new section is not a crime. Subdivision (c) provides that "[t]his section does not impose, and shall not be used as the basis for, criminal liability."

[Uncodified Section One of this bill sets forth the Legislature's intent that this bill achieve parity with the access and protections established for journalists and news media in existing P.C. 409.5 (which grants news persons access to areas closed because of a natural disaster, riot, or other civil disturbance.]

P.C. 422.56
(Amended)
(Ch. 295) (AB 600)
(Effective 1/1/2022)

Clarifies that "immigration status" is included in the definition of "nationality" for purposes of hate crimes. Now "nationality" means country of origin, immigration status including citizenship, and national origin.

Provides that the addition of immigration status is declaratory of existing law.

[Existing P.C. 422.55 provides that a hate crime is an act committed in whole or in part because of one of the following actual or perceived characteristics: Disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.]

P.C. 422.87
(Amended)
(Ch. 691) (AB 57)
(Effective 1/1/2022)

Adds "religion-bias hate crimes" to the list of what must be included when a law enforcement agency updates an existing hate crimes policy or adopts a new hate crimes policy. The policy must instruct officers to consider whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion, or articles considered of spiritual significance in a particular religion. Examples of symbols and articles include, but are not limited to: Statues of Buddha (Buddhism); crosses (Christianity); forehead markings, Aum/Om symbols, and images of deities known as murtis (Hinduism); hijabs (Islam); stars of David, menorahs, and yarmulke (Judaism); and turbans, head coverings, and unshorn hair (Sikhism).

[This bill also amends P.C. 13519.6, regarding hate crimes training for peace officers. See below for more information.]

P.C. 423.1
P.C. 423.2
P.C. 423.3
(Amended)
(Ch. 191) (AB 1356)
(Effective 1/1/2022)

Makes several amendments to the California Freedom of Access to Clinic and Church Entrances Act (FACE, P.C. 423–423.6), which protects abortion clinics, providers, and patients.

Amends P.C. 423.2 to add two new misdemeanor crimes:

1. Intentionally videotaping, filming, or recording, within 100 feet of or within, a reproductive health services facility (e.g., an abortion clinic), a reproductive health services patient, provider, or assistant, without that person's consent and with the specific intent to intimidate

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the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causing the person to be intimidated.

2. Intentionally disclosing or distributing a video, film, or recording knowing it was obtained in violation of (1) above, with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causing the person to be intimidated.

For both of these new misdemeanor crimes, provides that they do *not* apply to a person described in California Constitution Article I, Section 2(b) (i.e., a publisher, editor, or news reporter connected with or employed by a newspaper, magazine, radio station, or television station.)

Both are punishable by up to one year in jail and/or by a fine of up to $10,000 for a first violation, and by up to one year in jail and/or by a fine of up to $25,000 for a second or subsequent violation.

P.C. 423.2 continues to include these misdemeanor crimes: injuring, intimidating, or interfering with a person or entity because the person or entity is a reproductive health services patient, provider, or assistant; injuring, intimidating, or interfering with a person lawfully exercising the First Amendment right of religious freedom at a place of worship; damaging or destroying the property of a person or entity because the person or entity is a reproductive health services patient, provider, assistant, or facility; and damaging or destroying the property of a place of religious worship.

Amends P.C. 423.3 to increase the punishment for some misdemeanor crimes specified in P.C. 423.2. Previously, a first or subsequent violation of some P.C. 423.2 crimes was punishable by up to six months in jail and others by up to one year in jail. All P.C. 423.2 misdemeanors are now punishable by up to one year in jail. Some maximum fines were previously limited to $2,000 and $5,000. Those have been increased to $10,000 and $25,000.

P.C. 487m
(New)
(Ch. 325) (AB 1003)
(Effective 1/1/2022)

Creates the new felony crime of "intentional theft of wages" in an amount greater than $950 from one employee, or $2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period.

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Provides that this crime is punishable as grand theft. Therefore, pursuant to existing P.C. 489, this new crime is punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h), or, by up to one year in jail.

Defines "theft of wages" as the intentional deprivation of wages as defined in Labor C. 200 (all amounts for labor performed by employees of every description), or gratuities as defined in Labor C. 350 (money paid, given to, or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or goods, food, or drink sold or served to the patron), or benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, or other compensation is due to the employee under law.

Provides that "employee" also includes an independent contractor and that "employer" includes the hiring entity of an independent contractor.

Provides that the wages, gratuities, benefits, or other compensation that are the subject of a prosecution under this new section may be recovered as restitution in accordance with existing P.C. 1202.4 and 1203.1.

Provides that this new section does *not* prohibit the employee or the Labor Commissioner from commencing a civil action to seek remedies provided for under the Labor Code.

P.C. 490.4
(New)
(Ch. 113) (AB 331)
(Effective 7/21/2021)

Re-enacts P.C. 490.4, the felony/misdemeanor crime of organized retail theft, which had a sunset date of July 1, 2021, with the same language. P.C. 490.4 will now sunset on January 1, 2026.

[This bill also re-enacts P.C. 13899 and 13899.1, with the same language, in order to continue the Regional Property Crimes Task Force operated by the California Highway Patrol and the Department of Justice.]

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

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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 person 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.

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.

[The following three sections related to organized retail theft were enacted in 2018 in Assembly Bill 1065 along with P.C. 490.4 and also had a sunset date of July 1, 2021, but were *not* re-enacted:

1. P.C. 786.5, permitting jurisdiction for specified theft offenses in the county where the theft or receipt of stolen property occurred, the county in which the merchandise was recovered, or the county where any act was done by

continued

the defendant in instigating, procuring, promoting, or aiding in the commission of a theft offense.

2. P.C. 1001.81, a diversion or deferred entry of judgment program for repeat theft offenders.

3. P.C. 1210.6, a grant program for county courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.]

[AB 1065 also amended two sections that reverted back to their pre-AB 1065 versions on July 1, 2021:

1. P.C. 853.6(i) no longer provides that in these three circumstances a peace officer is not required to cite and release a misdemeanor arrestee:
   a. The person has one or more failures to appear in court on previous misdemeanor citations that have not been resolved; or
   b. The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months; or
   c. There is probable cause to believe that the person is guilty of committing organized retail theft in violation of P.C. 490.4.

2. P.C. 978.5 no longer includes the following in the list of circumstances in which a bench warrant of arrest may be issued when a defendant fails to appear in court: When 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.

(However, the list continues to provide that the court's authority to issue a bench warrant for failure to appear is not limited to the listed situations.)]

P.C. 530.8
(Amended)
(Ch. 265) (AB 430)
(Effective 1/1/2022)

Adds a Federal Trade Commission identity theft report as an alternative document to a P.C. 530.6 identity theft police report, that a victim of identity theft may present to a bank, credit union, public utility, mail forwarding service, credit card company, etc., in order to be entitled to receive information and documents about an application or account that an unauthorized person opened in the victim's name.

continued

[The bill makes similar amendments to Civil C. 1788.18 (debt collection activities), 1788.61 (fair debt buying practices), and 1798.92 and 1798.93 (action to establish that a person is a victim of identity theft).]

P.C. 594.39
(New)
(Ch. 737) (SB 742)
(Effective 10/8/2021)

Creates the new misdemeanor crime of knowingly approaching within 30 feet of a person while that person is within 100 feet of the entrance or exit to a vaccination site and is seeking to enter or exit the site, or any occupied motor vehicle seeking entry or exit to a vaccination site, for the purpose of obstructing, injuring, harassing, intimidating, or interfering with that person or vehicle occupant. Punishable by up to six months in jail and/or by a fine of up to $1,000.

[This new crime is worded awkwardly and it is not clear whether the 30-foot and/or 100-foot requirements apply if an occupied motor vehicle is involved, but the definition of "harassing" indicates that the 30-foot requirement applies to an occupied vehicle.]

Defines six terms:

1. "Harassing" is knowingly approaching, without consent, within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with, another person in a public way or on a sidewalk area.

2. "Interfering With" is restricting a person's freedom of movement.

3. "Intimidating" is making a true threat directed to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

4. "Obstructing" is rendering ingress to or egress from a vaccination site, or rendering passage to or from a vaccination site, unreasonably difficult or hazardous.

5. "True threat" is a statement in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group of persons regardless of whether the person actually intends to act on the threat.

continued

6. "Vaccinate Site" is the physical location where vaccination services are provided, including, but not limited to, a hospital, physician's office, clinic, or any retail space or pop-up location made available for vaccination services.

Provides that lawful picketing arising out of a labor dispute is not a violation of this new crime.

[There are concerns about the constitutionality of this bill, and lawsuits have already been filed on First Amendment grounds.]

P.C. 597f
(Repealed)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Repeals this section, which contains the misdemeanor crime of failing to properly care for an animal, authorizes the seizure of abandoned or neglected animals, and makes the owner liable for the costs of caring for the animal.

Existing P.C. 597.1 continues to be in effect. It contains P.C. 597f provisions, and more. P.C. 597.1 makes it a misdemeanor crime to fail to properly care for an animal, authorizes taking possession of stray or abandoned animals for care and treatment, authorizes the seizure of an animal for the health and safety of the animal or others, and sets forth detailed procedures for seizure and impoundment hearings. P.C. 597.1 provides for both pre-seizure hearings and post-seizure hearings. Under specified circumstances, an animal may be seized immediately before a hearing is held.

In *Carrera v. Bertaini* (1976) 63 Cal.App.3d 721, the court found P.C. 597f constitutionally invalid for failing to provide the animal owner a reasonable notice and hearing regarding the impoundment of an animal.

P.C. 654
(Amended)
(Ch. 441) (AB 518)
(Effective 1/1/2022)

Amends subdivision (a) to authorize a court to impose sentence on the crime that carries the lesser penalty, and stay sentence on the crime carrying the greater penalty, when a defendant is convicted of two crimes that pertain to one act. No longer will a court be required to sentence on the crime that carries the potentially greater penalty.

Subdivision (b) was not amended and continues to provide that notwithstanding subdivision (a), a defendant shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibit the granting of

continued

probation. Thus, if the defendant is convicted of one crime that prohibits probation and another crime that permits the granting of probation, the defendant remains **in**eligible for probation even if the court stays sentence pursuant to P.C. 654 on the crime that makes the defendant ineligible for probation.

[A bit of history: Since SB 914 was enacted in 1997 (effective 1/1/1998), a court has been required to impose sentence on the crime carrying the longest potential term of imprisonment in a situation where a defendant is convicted of two crimes that are punishable in different ways for the same act. The purpose of SB 914 was to abrogate the holding in *People v. Norrell et. al* (1996) 13 Cal.4th 1, in which the California Supreme Court held that based on the language of P.C. 654 at that time, the trial court was permitted to sentence the defendants to a determinate term for the P.C. 211 robbery conviction and to stay the life sentence on the P.C. 209(b) kidnapping for robbery conviction.]

[*Retroactivity*: This amendment will apply prospectively to every pending case on January 1, 2022, even if the crime was committed before 2022. The general rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3; and *People v. Brown* (2012) 54 Cal.4th 314, 319.) The exception to this rule is that when a new law mitigates punishment or provides an ameliorative benefit, it will apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740.) Based on how the courts have ruled the last few years on retroactivity issues such as the shortening of probation periods (P.C. 1203a and 1203.1), the prohibition on transferring juvenile offenders age 14 and 15 to adult court (W&I 707), the elimination of almost all three-year H&S 11370.2 drug trafficking enhancements, the elimination of virtually all one-year P.C. 667.5(b) prison prior enhancements, the granting of authority to the courts to strike P.C. 667(a) five-year priors (P.C. 1385) and to strike or dismiss firearm enhancements (P.C. 12022.53 and 12022.5), the courts may rule that this amendment to P.C. 654 applies to every case not final on appeal as of January 1, 2022.]

P.C. 680
P.C. 680.3
(Amended)
(Ch. 634) (SB 215)
(Effective 1/1/2022)

Requires the Department of Justice (DOJ), by July 1, 2022 to establish a process that allows sexual assault victims to privately and electronically track and receive updates about the status and location of their sexual assault evidence kits in DOJ's SAFE-T database.

[Existing language in P.C. 680 required DOJ to establish a process by July 2018 for sexual assault victims to inquire about their sexual assault evidence kits. This bill eliminates the cumbersome telephone process and permits victims to obtain information online through a secure portal in DOJ's SAFE-T database. P.C. 680.3 continues to require law enforcement agencies to create an information profile for sexual assault kit evidence in the SAFE-T database, within 120 days of collecting the evidence.]

P.C. 801.7
(New)
(Ch. 206) (AB 1247)
(Effective 1/1/2022)

Extends the statute of limitations for prosecuting a felony P.C. 502 offense (computer crimes) *from* within three years after the commission of the offense, *to* within three years after the discovery of the offense or within three years after the offense could reasonably have been discovered, but no more than six years after the commission of the offense.

[With this expanded statute of limitations, computer crimes such as hacking and cyberattacks that are not discovered until long after they are committed, may still be filed in criminal court, as long as charges are filed within six years of the date of commission.]

Provides that this new section applies to crimes committed on or after January 1, 2022 and to crimes for which the statute of limitations had not run as of January 1, 2022.

P.C. 803
(Amended)
(Ch. 483) (SB 23)
(Effective 1/1/2022)

Extends the statute of limitations for filing a violation of P.C. 647(j)(4) (commonly referred to as "revenge porn") *from* one year, *to* within one year of the date of discovery but no more than four years after the date the image was distributed.

[P.C. 647(j)(4) is the misdemeanor crime of intentionally distributing an image of the intimate body part of another person or an image of the person engaging in a sex act, under circumstances in which the persons agreed or understood the image would remain private, and the person distributing

continued

the image knows or should know that distribution will cause serious emotional distress, and the person depicted suffers that distress.]

P.C. 817
(Amended)
(Ch. 20) (AB 127)
(Effective 1/1/2022)

Authorizes an employee of a public prosecutor's office (e.g., a deputy district attorney or deputy city attorney) to make a declaration of probable cause to a magistrate if the defendant is a peace officer, in order to obtain a warrant of probable cause for arrest.

Previously, P.C. 817 was worded only in terms of a declaration of probable cause being made by a peace officer.

[P.C. 817 was enacted in 1995 and codified the California Supreme Court's decision in *People v. Bittaker* (1989) 48 Cal.3d 1046, which upheld, under the doctrine set forth in *People v. Ramey* (1976) 16 Cal.3d 263, the legality of issuing an arrest warrant upon a declaration of probable cause, before formal charges are filed.]

[According to the legislative history of this bill, an obstacle to the prosecution of police officers is the unwillingness of law enforcement officers to assist in the prosecution of one of their own and this can lead to law enforcement officers refusing to provide the necessary information to support an arrest warrant.]

P.C. 830.1
(Amended)
(Ch. 588) (AB 779)
(Effective 1/1/2022)

Adds deputy sheriffs employed to perform custodial and inmate transportation duties in the counties of Del Norte, Madera, Mono, and San Mateo to the list of deputy sheriffs in 32 other counties who qualify as peace officers, but only while engaged in the performance of their custodial/transportation duties.

P.C. 830.2
(Amended)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Makes a technical, non-substantive amendment to specify that persons employed by the Department of Cannabis Control (instead of the "Bureau of Cannabis Control") to enforce the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA B&P 26000–26260), are peace officers.

[Among other things, this bill changes the name of the Bureau of Cannabis Control to the Department of Cannabis Control.]

P.C. 830.3
P.C. 830.7
(Amend)
(Ch. 411) (AB 483)
(Effective 1/1/2022)

Grants peace officer status to the museum security and safety officers at the California Science Center at Exposition Park (located in Los Angeles) by removing them from P.C. 830.7 and adding them to P.C. 830.3(r). Food and Ag. C. 4108 is also amended by this bill and requires that the museum security and safety officers complete the regular basic training course prescribed by the Commission on Peace Officer Standards and Training (POST).

The chief and assistant chief of museum security at the California Science Center were already listed in P.C. 830.3(r).

[P.C. 830.7 provides that those listed are not peace officers but may exercise the power to arrest. P.C. 830.3 grants peace officer status to specified officers and provides that their authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest. P.C. 830.3 provides that the listed peace officers may carry firearms only if authorized by the employing agency.]

P.C. 830.11
(Amended)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Adds another category of persons who are authorized to exercise the powers of arrest of a peace officer and serve search warrants even though not an actual peace officer, if they have taken a course in the exercise of these powers: a person employed by the Department of Cannabis Control and designated as an investigator, investigator supervisor, or investigator manager, whose primary duty is the enforcement of, and investigations relating to, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA B&P 26000–26260). [Among other things, this bill changed the name of the Bureau of Cannabis Control to the Department of Cannabis Control.]

P.C. 832.5
P.C. 832.7
P.C. 832.12
(Amended)
P.C. 832.13
(New)
(Ch. 402) (SB 16)
(Effective 1/1/2022)

and

P.C. 832.7
(Further Amended)
(Ch. 409) (SB 2)
(Effective 1/1/2022)

Makes a number of changes related to peace officer misconduct records, including increasing the time that records must be retained, expanding the categories of misconduct records that are subject to disclosure, and limiting the costs that can be charged by an agency to provide records to a requester.

P.C. 832.5
Increases the length of time that a department or agency must retain complaints about peace officer conduct and reports or findings related to complaints, *from* at least 5 years *to* at least 5 years for records where there was not a sustained finding of misconduct, and at least 15 years where there was a sustained finding of misconduct. Prohibits the destruction of a record while a disclosure request is being processed or while litigation about disclosure is ongoing.

P.C. 832.7 (SB 16, Chapter 402)
Adds the following types of records to those that are deemed *not* confidential under the California Public Records Act and must be made available for public inspection:

1. Records relating to a sustained finding involving a complaint that alleges unreasonable or excessive force.

2. Records relating to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

3. Records relating to a sustained finding that an officer engaged in conduct (e.g., verbal, in writing, online posts, recordings, gestures) involving prejudice or discrimination against a person on the basis of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

4. Records relating to a sustained finding that an officer made an unlawful arrest or conducted an unlawful search.

Provides that the above records that relate to an incident that occurred before January 1, 2022 are *not* subject to the time limitations in P.C. 832.7(b)(8) until January 1, 2023.

continued

(P.C. 832.7(b)(8) permits a law enforcement agency to withhold records of officer misconduct and use of force from the public if the incident is the subject of an active criminal or administrative investigation, but only for a specified period of time and under specified circumstances.)

Continues to provide that records about the following types of conduct are not confidential and must be made available for public inspection: The discharge of a firearm at a person by an officer; the use of force by an officer that results in death or great bodily injury; a sustained finding of sexual assault by an officer against a member of the public; a sustained finding involving dishonesty by an officer related to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another officer, including false statements, filing false reports, destruction of evidence, falsifying evidence, concealing evidence, or perjury.

Requires the disclosure of records that would otherwise be subject to disclosure, when they relate to an officer who resigned before the law enforcement agency finished its investigation.

Expands the purposes for which an agency may redact a record before disclosing it, by adding the preservation of the anonymity of whistleblowers and victims. (Complainants and witnesses continue to be specified.)

Expands to all forms of officer misconduct and use of force listed in this section (discharge of a firearm by an officer, use of force resulting in death or great bodily injury, unreasonable or excessive force, failing to intervene against an officer using unreasonable or excessive force, sexual assault, dishonesty, prejudice or discrimination, unlawful arrest or unlawful search) the provisions that permit an agency to withhold records of an incident for specified periods of time when there is an active criminal or administrative investigation. Previously, withholding records because of an active investigation applied only to incidents involving the discharge of a firearm at a person by an officer and the use of force by an officer against a person that results in death or great bodily injury.

Adds that the costs of copying records that a department may charge a requestor shall not include the costs of searching for, editing, or redacting the records.

continued

Adds that records subject to disclosure must be provided at the earliest possible time and no later than 45 days from the date of request for disclosure, unless the agency is permitted to withhold records because of an active investigation.

Adds that the lawyer-client privilege does not prohibit the disclosure of either of the following:

1. Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney; and
2. billing records related to the work done by the attorney as long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(Therefore, an agency cannot use the attorney-client privilege to avoid disclosing factual information or specified billing records.)

P.C. 832.7 (Additional Amendment by SB 2, Chapter 409)
Adds the Commission on Peace Officer Standards and Training (POST) to the list of entities (grand jury, district attorney's office, and the Attorney General's office), that P.C. 832.7 does not apply to when they are investigating the conduct of peace officers or custodial officers.

[SB 2 is known as the Kenneth Ross Jr. Police Decertification Act of 2021. It also amends Civil C. 52.1, Gov't C. 1029, and amends and adds a number of Penal Code sections from 13503 to 13510.9. See the Civil Code and Government Code sections of this digest for more information, and see P.C. 13503–13510.9, below.]

P.C. 832.12
Requires each department or agency, before hiring a peace officer, to request and review the prospective officer's prior personnel files.

P.C. 832.13
Requires every person employed as a peace officer to immediately report all uses of force by that officer to his or her department or agency.

continued

[This bill also amends Evid. C. 1045 to permit a court to order the disclosure of peace officer conduct occurring more than five years before the current incident, if the court finds the information to be relevant. See the Evidence Code section of this digest for more information.]

P.C. 851.93
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Expands and makes retroactive the requirement that the Department of Justice review its records and grant arrest record expungement relief to specified offenders. Previously, this section applied only to arrests occurring on or after January 1, 2021. It now applies to arrests occurring on or after January 1, 1973. Continues to provide that this section will become operative on July 1, 2022 if there is an appropriation in the annual Budget Act.

P.C. 977
(Amended)
(Ch. 196) (AB 700)
(Effective 1/1/2022)

Adds new subdivision (d) permitting a court to proceed with a trial or hearing and allow a defendant to appear by counsel, when an in-custody defendant refuses to come to court and the judge makes specified findings.

Permits a court to allow an in-custody defendant to appear by counsel at a trial, hearing, or other proceeding, with or without a written waiver, if the court finds all of the following to be true by clear and convincing evidence:

1. The defendant is in custody and is refusing, without good cause, to appear in court that day;
2. the defendant has been informed of the right and obligation to be personally present in court;
3. the defendant has been informed that the trial or hearing will proceed without the defendant being present;
4. the defendant has been informed of the right to remain silent;
5. the defendant has been informed that absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront witnesses and to testify on his or her own behalf; and
6. the defendant has been informed as to whether or not defense counsel will be present.

Requires the court to state on the record the reasons for the court's findings, and the findings and reasons must be entered into the minutes.

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Provides that if the trial or hearing lasts for more than one day, the court is required to make these findings anew for each day that the defendant is absent (which may mean that defense counsel will have to visit the defendant in jail each day in order to make the required advisements and warnings, and then report back to the court).

Provides that this new subdivision does *not* apply to any trial or hearing in which the defendant was personally present in court at the commencement of the trial or hearing.

[This bill also makes similar amendments to P.C. 1043 (trials) and P.C. 1043.5 (preliminary hearings). See below.]

P.C. 1000.7
(Amended)
(Ch. 210) (AB 1318)
(Effective 1/1/2022)

Extends the sunset date, from January 1, 2022 to January 1, 2024, to continue for two more years the operation of this Deferred Entry of Judgment pilot program for young adult offenders. Continues to apply to these six counties: Alameda, Butte, Napa, Nevada, Santa Clara, and Ventura.

P.C. 1001.15
P.C. 1001.16
(Repealed)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Repeals these two sections that had permitted judges to impose an administrative fee for participation in a diversion program, for the cost of a crime lab analysis, for the cost of processing a request or application for diversion, and for the cost of diversion supervision.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1001.90
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the 10 percent fee that a county was permitted to charge to cover the costs of collecting the diversion restitution fee that this section authorizes judges to impose when a defendant is diverted pursuant to the various diversion programs provided for in Title 6 of Part 2 of the Penal Code (i.e., P.C. 1000–1001.97). Continues to require a judge to impose a diversion restitution fee of between $100

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and $1,000 unless the court finds that there are compelling and extraordinary reasons to waive the fee and states reasons on the record. The diversion restitution fee goes to the state's Restitution Fund to help crime victims.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1016.7
(New)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

Requires a prosecutor, in order to reach a just resolution during plea negotiations, to consider the following factors in support of a mitigated sentence if any were "a contributing factor in the commission of the alleged offense":

1. The defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

2. The defendant is a youth, or was a youth at the time the crime was committed. Defines "youth" as a person under age 26 on the date of the offense.

3. Prior to the offense, or during its commission, the defendant was a victim of intimate partner violence or human trafficking.

[Note that these are the same factors that require a court to impose the low term of imprisonment pursuant to amended P.C. 1170(b), unless the court finds that the aggravating circumstances outweigh the mitigating circumstances.]

[This bill also adds P.C. 236.15 to provide vacatur relief for victims of intimate partner violence and sexual violence; amends P.C. 236.23 to expand the affirmative defense of being coerced to commit an offense as a result of being a human trafficking victim; adds new P.C. 236.24 to provide an affirmative defense of being coerced to commit an offense as a result of being a victim of intimate partner violence or sexual violence; amends P.C. 1170(b) to require the imposition of the low term if the court finds that a specified

continued

mitigating factor contributed to the commission of the offense; and amends P.C. 1170(d)(1) to specify mitigating factors the court must consider when re-sentencing a defendant. (P.C. 1170(d)(1) is moved to new P.C. 1170.03 by AB 1540, a later chaptered bill.) For more information, see each of these entries in this section of the digest.]

P.C. 1043
(Amended)
(Ch. 196) (AB 700)
(Effective 1/1/2022)

Adds new subdivision (f) to permit a court to begin or proceed with a trial when an in-custody defendant refuses to come to court and the judge makes specified findings. Subdivision (f) provides that a trial shall be deemed to have commenced in the presence of a defendant if the court finds by clear and convincing evidence that all of the following are true:

1. The defendant is in custody and is refusing, without good cause, to appear in court that day;
2. the defendant has been informed of the right and obligation to be personally present in court;
3. the defendant has been informed that the trial will proceed without the defendant being present;
4. the defendant has been informed of the right to remain silent;
5. the defendant has been informed that absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront witnesses and to testify on his or her own behalf; and
6. the defendant has been informed as to whether or not defense counsel will be present.

Requires the court to state on the record the reasons for the court's findings, and the findings and reasons must be entered into the minutes.

Provides that if the trial lasts for more than one day, the court is required to make these findings anew for each day that the defendant is absent (which may mean that defense counsel will have to visit the defendant in jail each day in order to make the required advisements and warnings, and then report back to the court).

Provides that this new subdivision does *not* apply to any trial in which the defendant was personally present in court at the commencement of the trial.

(Existing subdivision (b) continues to permit a court to proceed with a *felony* trial when the trial commenced in the physical presence of the defendant and either (1) the

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defendant after warning, is removed for disruptive behavior, or, (2) the defendant is voluntarily absent and the offense being tried is not punishable by death.)

[This bill also makes similar amendments to P.C. 977 (providing for when a defendant must be present in court) and P.C. 1043.5 (preliminary hearings). See above and below.]

A Note About Misdemeanor Cases*:* P.C. 1043(e)(4) contains a drafting error that appears to eliminate the ability of a court to proceed with a misdemeanor trial when an out-of-custody defendant fails to appear for trial on the first day of trial, or in the middle of trial. Previously, P.C. 1043(e)(4) provided that when a defendant in a misdemeanor trial failed to appear at the time set for trial or during the course of the trial, the court could proceed with the trial if the court found that the defendant had absented himself or herself voluntarily with full knowledge that the trial was to be held or was being held. Now P.C. 1043(e)(4) provides that the court may proceed with the trial "in the defendant's absence as authorized in subdivision (f)," but subdivision (f) requires the court to find that the defendant is in custody and refusing to appear in court. Such a finding could not be made in an out-of-custody case and thus the amendment to subdivision (e)(4) makes no sense as written. Because the intent and purpose of the bill is to address an in-custody defendant who refuses transportation to court, and because it is impossible for a judge to find that an out-of-custody defendant is in custody, judges may be willing to judicially reform or correct the statute and restore subdivision (e)(4) back to its original language for cases that involve an out-of-custody defendant. A legislative correction will likely be proposed in the upcoming legislative session and it is not anticipated that there will be any opposition to the fix.

P.C. 1043.5
(Amended)
(Ch. 196) (AB 700)
(Effective 1/1/2022)

Adds new subdivision (e) to permit a court to begin a preliminary hearing when an in-custody defendant refuses to come to court and the judge makes specified findings. Subdivision (e) provides that a preliminary hearing shall be deemed to have commenced in the presence of a defendant if the court finds by clear and convincing evidence that all of the following are true:

1. The defendant is in custody and is refusing, without good cause, to appear in court that day;
2. the defendant has been informed of the right and obligation to be personally present in court;
3. the defendant has been informed that the preliminary hearing will proceed without the defendant being present;

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4. the defendant has been informed of the right to remain silent;
5. the defendant has been informed that absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront witnesses and to testify on his or her own behalf; and
6. the defendant has been informed as to whether or not defense counsel will be present.

Requires the court to state on the record the reasons for the court's findings, and the findings and reasons must be entered into the minutes.

Provides that if the preliminary hearing lasts for more than one day, the court is required to make these findings anew for each day that the defendant is absent (which may mean that defense counsel will have to visit the defendant in jail each day in order to make the required advisements and warnings, and then report back to the court).

Provides that this new subdivision does *not* apply to any preliminary hearing in which the defendant was personally present in court at the commencement of the preliminary hearing. (Existing subdivision (b) continues to permit a court to proceed with a preliminary hearing when the preliminary hearing commenced in the physical presence of the defendant and either (1) the defendant after warning, is removed for disruptive behavior, or (2) the defendant is voluntarily absent and the offense being tried is not punishable by death.)

[This bill also makes similar amendments to P.C. 977 (providing for when a defendant must be present in court) and P.C. 1043 (trials). See above.]

P.C. 1054.2
(Amended)
(Ch. 91) (AB 419)
(Effective 1/1/2022)

Expands the type of information that defense attorneys are prohibited from disclosing about victims and witnesses beyond addresses and telephone numbers, to "personal identifying information." Provides that personal identifying information has the same definition as that in P.C. 530.55 (e.g., address, telephone number, date of birth, driver's license number, social security number, bank account number, mother's maiden name, passport number, credit card number), but does *not* include name, place of employment, or an equivalent form of identification.

[The legislative history of the bill offers this reason for exempting a victim's or witness' place of employment from the prohibition on information disclosure: the place of employment

continued

"often informs how, why, and when an eyewitness was able to observe an alleged crime. It can also be an important starting point for how a case is investigated from either a prosecutorial or a defense perspective."

Eliminates the misdemeanor crime of an attorney, an employee of an attorney, or person appointed by the court committing a willful violation of this section. There is no longer any criminal penalty for violating P.C. 1054.2 and there is no explanation given in the legislative history of the bill as to why it was eliminated.

Continues to permit a defense attorney to disclose personal identifying information to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case, if that disclosure is required for preparation.

Continues to permit a defense attorney to disclose personal identifying information if permitted to do so by the court after a hearing and showing of good cause.

Continues to require that if a defendant is acting as his or her own attorney the court must protect the personal identifying information of a witness or victim by providing for contact only through a licensed private investigator, or by imposing other reasonable restrictions.

P.C. 1109
(New)
(Ch. 699) (AB 333)
(Effective 1/1/2022)

Part of the "STEP Forward Act of 2021."

Requires that gang enhancements charged under P.C. 186.22(b) or (d) be tried separately from the underlying charges, if requested by the defense. Provides that if a defendant is charged with P.C. 186.22(a) (the crime of actively participating in a criminal street gang), this count must be tried separately from all other counts that do not require gang evidence as an element of the crime, and may be tried in the same proceeding with a P.C. 186.22(b) or (d) enhancement.

Provides that gang allegations "shall be proved by direct or circumstantial evidence." It is unclear why this is included in new P.C. 1109, since for years both direct and circumstantial evidence have been acceptable types of evidence. Juries are instructed in California Criminal Jury Instruction (CALCRIM) 223 that a fact may be proved by either type of

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evidence or a combination of both, and that neither type of evidence is entitled to any greater weight than the other.

Provides no guidance on the issue of whether bifurcation would be required if gang evidence is relevant to the underlying charges or is necessary for the jury to have a full understanding of the circumstances of the crime.

[This bill also amends P.C. 186.22 in several ways to reduce the ability of prosecutors to successfully prosecute gang crimes. See P.C. 186.22, above, for more information.]

Bifurcation of gang enhancements and the P.C. 186.22(a) gang crime is a procedural change that will apply prospectively to trials occurring on and after January 1, 2022, even if the crime occurred before 2022. In *Tapia v. Superior Court* (1991) 53 Cal.3d 282, the California Supreme Court ruled on the retroactive versus prospective application of various aspects of Proposition 115, finding that provisions that addressed the conduct of trials applied prospectively to all cases pending when Proposition 115 became effective, regardless of when the underlying crime occurred.

[Uncodified Section Two of the bill contains a lengthy declaration by the Legislature attempting to justify reducing law enforcement's ability to combat, deter, and prosecute gang crime. The bill had significant bipartisan opposition in the Legislature. It passed by only one vote in the Assembly (41 yes votes) and got only 25 yes votes in the 40-member Senate.]

[Note that because of the amendment to P.C. 1170 by SB 567 requiring that aggravating circumstances used for sentencing be decided by a jury in a trial that is bifurcated from the underlying charges, it is likely that in a number of gang cases there would have to be three trials: The first on the underlying charges, the second on gang enhancements, and the third on aggravating circumstances.]

P.C. 1170
(Amended)
(Ch. 695) (AB 124)
(Effective 1/1/2022)

and

(Amended)
(Ch. 719) (AB 1540)
(Effective 1/1/2022)

and

(Amended)
(Ch. 731) (SB 567)
(Effective 1/1/2022)

P.C. 1170 is amended by three bills.

SB 567 requires a bifurcated trial on aggravating circumstances.

AB 1540 expands P.C. 1170(d)(1) recall and re-sentencing provisions and moves them to new P.C. 1170.03. AB 1540 also renumbers the P.C. 1170(d)(2) recall and re-sentencing provisions to P.C. 1170(d)(1). (P.C. 1170(d)(2) applies to defendants sentenced to LWOP who were under age 18 at the time of the crime.)

AB 124 amends P.C. 1170(b) to require that the low term be imposed if a specified mitigating circumstance is found to have been a contributing factor in the commission of the crime. AB 124 also adds these same mitigating circumstances to the recall and re-sentencing provisions of P.C. 1170(d)(2) (which is now P.C. 1170(d)(1)).

Bifurcated Trials on Aggravating Circumstances: P.C. 1170(b) (SB 567)
Adds that when a statute specifies three possible sentencing terms, the court shall impose no more than the middle term except where there are aggravating circumstances that justify the high term, and the facts underlying the aggravating circumstances have either been stipulated to by the defendant or have been found true beyond a reasonable doubt at a jury or court trial.

***The Defense Controls Whether Aggravating Factors are Bifurcated*—**Provides that if the defendant requests bifurcation, the aggravating circumstances must be tried separately from the underlying charges and enhancements.

Exceptions to Bifurcation—Provides for three exceptions to bifurcation:

1. When the evidence supporting an aggravating circumstance is admissible to prove or defend against a charged crime or enhancement at trial. (E.g., evidence of violence and bodily harm (Rule of Court 4.421(a)(1)), weapon arming or use (Rule of Court 4.421(a)(2)), attempted or actual taking or damage of great monetary value (Rule of Court 4.421(a)(9)), or large quantity of contraband (Rule of Court 4.421(a)(10)) could very well be admissible at the trial on the underlying charges and enhancements).

continued

2. When the evidence supporting an aggravating circumstance "is otherwise authorized by law." (The amendment does not define this.)

3. When the aggravating factor is a prior conviction that is not the basis for an enhancement, the court is permitted to "consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury."

For example, a prior conviction that is the basis for an enhancement, such as a five-year P.C. 667(a) serious felony enhancement, would have to be decided by a jury unless the defendant admitted it or opted for a court trial. But a prior conviction that is the basis for probation ineligibility, or the basis for an aggravating factor could be decided by the court based on certified records and used as an aggravating factor without a trial, as a court could do before this amendment.

Jury Cannot Be Informed of Bifurcated Allegations Until There is a Conviction—Prohibits the jury from being informed of any bifurcated allegations until there has been a conviction of a felony offense.

Burden of Proof—Requires that aggravating factors be proved beyond a reasonable doubt at trial, if not stipulated to by the defendant. Previously, aggravating factors were shown without the need for a trial, and the burden of proof was by preponderance of the evidence. See *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 and *Cunningham v. California* (2007) 549 U.S. 270, 288, 127 S.Ct. 856, 868.

Plead Aggravating Circumstances in the Charging Document—This amendment contemplates that aggravating circumstances will be pled in the charging document. (Amended P.C. 1170(b) provides that "upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements.") Consider alleging aggravating circumstances up front in the complaint to the extent they are known at the time charges are filed. Then, as the case proceeds, if additional aggravating circumstances are discovered, the charging document could be amended to add them. In this way, the defense and the court are both on notice as to the aggravating circumstances the prosecution intends to pursue, and the circumstances are already alleged if the defendant settles the case early.

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When it comes time for trial on any aggravating factor that has been bifurcated, the prosecution could decide to proceed on the ones that are the simplest to prove.

Whether evidence supporting an aggravating factor is admitted at the trial of the underlying charges, or whether there is a bifurcated trial, the aggravating factors should be added to the verdict form for the jury to make a true or not true finding.

The charging document in any case pending on January 1, 2022 should be amended to add applicable aggravating circumstances, if the prosecution wishes to prove any. Trials on aggravating circumstances is a procedural change that will apply prospectively to all pending cases, even if the crime occurred before 2022. See *Tapia v. Superior Court* (1991) 53 Cal.3d 282, holding that the procedural changes made by Proposition 115 applied to all pending cases, regardless of when the underlying crime was committed. *Barragan v. Superior Court* (2007) 148 Cal.App.4th 1478, 1483-1484 held that aggravating circumstances can be alleged in an accusatory pleading and that they are not required to be proved at a preliminary hearing. *People v. Superior Court (Brooks)* (2007) 159 Cal.App.4th 1, 5 disagreed with *Barragan* about alleging aggravating circumstances in a charging document. However, amended P.C. 1170(b) provides for them to be alleged in the charging document, so this case law split is not a problem. (Amended P.C. 1170(b) provides that "upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements.")

Proving Aggravating Factors at a Trial May Be Time Consuming, Burdensome to Victims and Witnesses, and Add to Court Congestion—Proving aggravating circumstances to a jury may be time consuming and may require the calling of witnesses, depending on which aggravating circumstances are being pursued. And a victim may have to testify in both the trial on the charges and in the bifurcated aggravating circumstances trial. For example, if a victim is particularly vulnerable (Rule of Court 4.421(a)(3)) and this evidence was not permitted at the trial on the underlying charges, the victim would have to testify about his or her vulnerability in a trial on aggravating circumstances, unless someone else could supply that testimony. Or, if the prosecution is pursuing the aggravating factor of the defendant being on probation, mandatory supervision, postrelease community

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supervision, or parole when the crime was committed (Rule of Court 4.421(b)(4)) or the aggravating factor of unsatisfactory performance on supervision (Rule of Court 4.421(b)(5)), proof of either of these could require testimony from a probation officer or parole officer, unless admissible documentary evidence is available, such as a court document showing a defendant previously admitted a supervision violation or previously was found to be in violation.

Keep in mind there are a number of aggravating circumstances, beyond those listed in the Rules of Court, that are listed in various code sections such as P.C. 1170.71 through P.C. 1170.89. Some of these target conduct, evidence of which should necessarily be admissible at the trial of the underlying charges. For example, P.C. 1170.84 provides that it is a circumstance in aggravation if in committing a serious felony (P.C. 1192.7(c)) the defendant ties, binds, or confines the victim. This kind of evidence should be admissible at the trial on the underlying charges.

The "Cunningham Fix" Was Not Extended by the Legislature—Even if SB 567 had not been signed into law, trials on aggravating factors would have been required because the *Cunningham* fix expired at the end of 2021 and was not extended by the Legislature, as it had been several times since 2007. Since March of 2007, P.C. 1170 (and several other Penal Code sections) have provided that when a statute specifies three possible terms of imprisonment, the choice of the appropriate term rests within the sound discretion of the court. Starting 1/1/2022, these statutes were set to revert back to their pre-March 2007 language, unless the Legislature passed another extension to keep the post-March 2007 language in place. No extension bill was introduced this legislative session. The U.S. Supreme Court held in *Cunningham v. California* (2007) 549 U.S. 270 that California's determinate sentencing law violated the right to a jury trial because it provided that the middle term of imprisonment was the presumptive term and permitted the sentencing court, without a jury finding, to determine aggravating factors in order to impose the high term. The California Legislature moved quickly to fix this and to avoid all of the problems that would be caused by having to try aggravating factors to a jury, by passing SB 40, effective March 30, 2007. SB 40 eliminated the middle term as the presumptive term, and provided that when a statute specifies three possible terms of imprisonment, the choice of the appropriate term rests within the sound discretion of the court.

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The Lower Term Is Required if the Court Finds a Specified Circumstance Was a Contributing Factor in the Commission of the Crime: P.C. 1170(b) (AB 124)
Amends P.C. 1170(b) to require the court to order the lower term of imprisonment if the court finds that a specified circumstance was a contributing factor in the commission of the crime, unless the court finds that the aggravating circumstances outweigh the mitigating circumstances such that imposition of the lower term would be contrary to the interests of justice. These provisions are in new paragraph (6) of P.C. 1170(b).

Sets forth these circumstances:

1. The defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

2. The defendant is a youth, or was a youth at the time the crime was committed. Defines "youth" as a person under age 26 on the date of the offense.

3. Prior to the offense, or during its commission, the defendant was a victim of intimate partner violence or human trafficking.

[Note that these are the same factors a prosecutor is required to consider during plea negotiations pursuant to new P.C. 1016.7.]

P.C. 1170(d)(1) Re-Sentencing Provisions Are Moved to New P.C. 1170.03 and Expanded (AB 1540)
See P.C. 1170.03 below.

(Former P.C. 1170(d)(1), now in P.C. 1170.03, permits a court to re-sentence a defendant within 120 days of commitment, or at any time upon the recommendation of the prosecutor, the Board of Parole Hearings, the CDCR Secretary, or county jail authorities.)

P.C. 1170(d)(2) Re-Sentencing Provisions Are Now in P.C. 1170(d)(1) (AB 1540) and Are Amended by AB 124
Re-numbers P.C. 1170(d)(**2**) as P.C. 1170(d)(**1**) and adds these three AB 124 circumstances as factors a court may use to re-sentence a defendant to a term that is less than the initial sentence imposed, if any were a contributing factor in the commission of the crime:

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1. The defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

2. The defendant is a youth, or was a youth at the time the crime was committed. Defines "youth" as a person under age 26 on the date of the offense.

3. Prior to the offense, or during its commission, the defendant is or was a victim of intimate partner violence or human trafficking.

Provides that a court is not prohibited from sentencing a defendant to a term less than the initial sentence even if none of these circumstances is present.

[P.C. 1170(d)(1) (formerly P.C. 1170(d)(2)) permits an inmate to petition for re-sentencing who was sentenced to life without the possibility of parole, was under age 18 at the time of the crime, and has been incarcerated for at least 15 years. Excludes inmates who tortured their victims, or whose victim was a public safety official or firefighter. Requires an inmate to establish a specified factor, such as the inmate was convicted pursuant to felony murder, or aided and abetted a murder, or committed the crime with at least one adult co-defendant, or does not have felony juvenile adjudications for assault or other crimes that have a significant potential for personal harm to victims, or, the inmate has performed acts that indicate the potential for rehabilitation or the inmate shows evidence of remorse.]

Retroactivity
These amendments will apply prospectively to every pending case on January 1, 2022, even if the crime was committed before 2022. (They will also apply to every re-sentencing that occurs on and after January 1, 2022.) The general rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3 and *People v. Brown* (2012) 54 Cal.4th 314, 319.) The exception to this rule is that when a new law mitigates punishment or provides an ameliorative benefit, it will apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740.) Based on how the courts have ruled the last few years on retroactivity issues, the courts may rule that some of these amendments apply to every case not final on appeal as of January 1, 2022.

P.C. 1170.01
(New)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Establishes a three-year "County Resentencing Pilot Program" to "support and evaluate a collaborative approach to exercising prosecutorial re-sentencing discretion" pursuant to P.C. 1170(d)(1). The pilot program will run from September 1, 2021 to September 1, 2024 and involves these nine counties: Contra Costa, Humboldt, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Clara, and Yolo.

[P.C. 1170(d)(1) provides that a court, a district attorney, the California Department of Corrections and Rehabilitation, or the county correctional administrator may request that the sentence of a state prison inmate or county jail inmate be recalled and the inmate re-sentenced. Note that AB 1540 (Chapter 719) moved P.C. 1170(d)(1) to new P.C. 1170.03 and expanded its provisions. It also moved P.C. 1170(d)(2) to P.C. 1170(d)(1). For more on P.C. 1170.03, see below.]

Participants
Provides that participants in the pilot program include district attorney offices and public defender offices, and authorizes a district attorney to contract with a qualified community-based organization.

Funding
AB 128 (a budget bill effective June 28, 2021) appropriates $18 million to this pilot program and designates specific amounts to go to nine district attorney and public defender offices in the counties of Contra Costa, Humboldt, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Clara, and Yolo. Provides that in addition to the amounts listed in Item 5227-115-0001 of AB 128, $250,000 is available to each district attorney's office to contract with a community-based organization.

District Attorneys
Requires each participating district attorney to develop and implement a written policy that outlines the factors and criteria that will be used to identify, investigate, and recommend a convicted defendant for recall and re-sentencing. Permits the district attorney to consider input from a public defender's office and from a contracted community-based organization. Requires a participating district attorney to identify, investigate, and recommend recall and re-sentencing of incarcerated persons consistent with its written policy. Requires a district attorney to

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use the funding to ensure adequate staffing of deputy district attorneys, paralegals, and data analysts to do the tasks required to process and facilitate re-sentencing recommendations.

Requires a district attorney to keep track of, and provide, data on a quarterly basis to an evaluator, including a summary of how funds were spent; the total number of cases considered for recall and re-sentencing, including the defendant's race, gender, age, and controlling offenses; the total number of prosecutor-initiated re-sentencing recommendations, including the number that were granted or denied by the court; the reasons for denial by a court; and the total number of inmates released from state prison because of prosecutor-initiated re-sentencings.

Public Defenders
Provides that all funding provided to a public defender's office must be used for supporting the re-sentencing of defendants, including ensuring adequate staffing of deputy public defenders and other support staff to represent incarcerated persons under consideration for re-sentencing, to identify and recommend incarcerated persons to the district attorney's office for re-sentencing, and to develop reentry and release plans. Authorizes a public defender's office to provide input to the district attorney regarding the factors, criteria, and processing to be used by the district attorney in the exercise of his or her discretion.

The Evaluator
Requires the evaluator (to whom data is provided by each district attorney) to analyze the data from all pilot participants and prepare three reports and four assessments.

P.C. 1170.03
(New)
(Ch. 719) (AB 1540)
(Effective 1/1/2022)

Moves P.C. 1170(d)(1) re-sentencing provisions to this new section and expands them significantly, including by establishing a presumption in favor of recall and re-sentencing.

P.C. 1170(d)(1) permitted, and 1170.03 continues to permit, a court to re-sentence a defendant within 120 days of commitment, or, at any time upon the recommendation of the district attorney, the Board of Parole Hearings, the Secretary of the Department of Corrections and Rehabilitation, or county jail authorities.

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Expands Recall and Re-Sentencing Provisions in These Ways:

1. Adds the Attorney General as an entity that may request recall and re-sentencing, if the Department of Justice originally prosecuted the case.

2. Permits recall and re-sentencing even if a defendant is out of custody.

3. Requires the court to apply any changes in the law that reduce sentences or provide for judicial discretion. (Thus, even if a defendant's conviction was final when laws that reduced sentences or permitted judges to strike enhancements went into effect, a court would be required to apply those law changes to a re-sentencing. Examples include the elimination of most one-year prison prior enhancements (P.C. 667.5(b)) and most three-year drug prior enhancements (H&S 11370.2); the authority of a court to strike five-year serious felony enhancements (P.C. 667(a)); and the authority of a court to strike or dismiss firearm enhancements pursuant to P.C. 12022.53 and 12022.5.)

4. With the agreement of both the prosecution and the defendant, authorizes the court to vacate a defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then re-sentence the defendant to a reduced term of imprisonment.

5. Adds three factors the court is required to consider in re-sentencing a defendant and whether any was a contributing factor in the commission of the crime:

    a. Whether the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.
    b. Whether prior to the offense, or during its commission, the defendant was a victim of intimate partner violence or human trafficking.
    c. Whether the defendant is a youth, or was a youth at the time the crime was committed. Defines "youth" as a person under age 26 on the date of the offense.

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(These three factors were added to P.C. 1170(d)(1) by AB 124 and then incorporated into P.C. 1170.03 when AB 1540 eliminated P.C. 1170(d)(1) and moved it to new P.C. 1170.03.)

6. Adds several procedures for recall and re-sentencing:

    a. Requires the court to state on the record the reasons for granting or denying recall and re-sentencing.
    b. Provides that re-sentencing may be granted without a hearing, upon stipulation by the parties.
    c. Prohibits re-sentencing from being denied, or a stipulation from being rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. Provides that if a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests the defendant be physically present in court.
    d. Requires the court to provide notice to the defendant and set a status conference within 30 days of receiving a request for re-sentencing. Requires the court to also appoint counsel to represent the defendant.

7. Establishes a presumption favoring recall and re-sentencing and provides that the presumption may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in existing P.C. 1170.18(c).

(P.C. 1170.18(c) defines unreasonable risk of danger to public safety as a unreasonable risk that the defendant will commit a new violent felony listed in P.C. 667(e)(2)(C)(iv), also known as "superstrikes:" A sexually violent offense specified in W&I 6600(b); oral copulation, sodomy, or sexual penetration on a child under age 14 and who is more than 10 years younger than the defendant; a lewd or lascivious act on a child under age 14 in violation of P.C. 288; any homicide offense, including attempted homicide, as defined in P.C. 187–191.5; solicitation to commit murder (P.C. 653f); assault with a machinegun on a peace officer or firefighter (P.C. 245(d)(3)); possession of a weapon of mass destruction as defined in P.C. 11418(a)(1); or any serious or violent felony punishable by life imprisonment or death.)

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Therefore, to overcome the presumption in favor of re-sentencing, it will not suffice to show that the defendant is dangerous to public safety or that there is a risk that the defendant will commit any one of a number of serious or violent crimes. It must be shown that there is an unreasonable risk that the defendant will commit one of the specific crimes from the narrow list above.

Crime Victims
Note that new P.C. 1170.03 says nothing about the role of crime victims during the process of recall and re-sentencing. Article One, Section 28(b)(7) of the California Constitution grants crime victims the right to reasonable notice of all public proceedings at which the defendant and prosecutor are entitled to be present, including post-conviction release proceedings, and the right to be present at these proceedings. Section 28(b)(8) grants crime victims the right to be heard at a proceeding involving a post-conviction release decision "or any proceeding in which a right of the victim is at issue."

P.C. 1170.1
(Amended)
(Ch. 731) (SB 567)
(Effective 1/1/2022)

Amends this section to provide that if an enhancement is punishable by one of three terms, the court shall impose no more than the middle term except where there are aggravating circumstances that justify the high term, and the facts underlying the aggravating circumstances have either been stipulated to by the defendant or have been found true beyond a reasonable doubt at a jury or court trial.

This bill amends P.C. 1170 in the same way, requiring imposition of the middle term for a crime unless aggravating factors proved at trial or admitted by the defendant justify imposition of the high term. P.C. 1170 requires a bifurcated trial on aggravating factors if the defense requests it, except in specified circumstances.

See P.C. 1170, above, for more information about bifurcated trials on aggravating factors.

P.C. 1170.17
P.C. 1170.19
(Repealed)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Repeals both of these sections, which were already obsolete.

Both sections were created in 1999 by SB 334 (effective 1/1/2000), to provide for a post-conviction fitness hearing in a juvenile case that had been filed directly in adult court. SB 334 also contained an amendment to W&I 602 to permit

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a juvenile case to be directly filed in adult court if the juvenile was age 16, had previously been declared a ward of the court for any felony committed at age 14 or older, and was currently facing a charge of murder, attempted murder, forcible sexual assault, kidnapping carrying a life-in-prison penalty, or a felony with a P.C. 12022.53(c) or (d) enhancement attached. SB 334 was the Legislature's pre-emptive response to Proposition 21 (The Gang Violence and Juvenile Crime Protection Act), which was on the ballot in 2000 and contained direct file provisions, both mandatory direct filing in adult court and direct filing at the discretion of the prosecution, based on the offense committed.

P.C. 1170.17 and 1170.19 provided for a post-conviction fitness hearing or "reverse remand" when , for example, the minor was convicted of a crime in adult court that was not the originally-charged offense, but was a crime for which the minor would have been presumed "fit" for juvenile court.

P.C. 1170.17 and 1170.19 became obsolete in November 2016 when Proposition 57 was enacted. Proposition 57 eliminated all direct filing of juvenile cases in adult court and provided that only a judge could transfer a case from juvenile court to adult court, after a transfer hearing was held.

P.C. 1170.95
(Amended)
(Ch. 551) (SB 775)
(Effective 1/1/2022)

Expands SB 1437's murder re-sentencing provisions to apply to attempted murder and to manslaughter, and makes changes in response to P.C. 1170.95 case law.

Attempted Murder and Manslaughter
Continues to provide that a petition for re-sentencing must include a declaration that the petitioner is eligible for relief based on all three of the following requirements, and adds references to attempted murder, manslaughter, and imputed malice:

1. A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine; and

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2. the petitioner was convicted of murder, attempted murder, or manslaughter following a trial or accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of murder or attempted murder; and
3. the petitioner could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189 made by SB 1437, effective January 1, 2019.

A Note About Manslaughter*:* Based on the language of #1 and #2, above, (#1 requiring a showing of a specified murder theory or imputed malice, and #2 requiring a showing that the petitioner could have been convicted of murder or attempted murder), P.C. 1170.95 should apply only to manslaughter cases that were reduced at some point from a murder charge, and should not apply in a case where manslaughter (e.g., P.C. 191.5, 192(a), 192(b), 192(c)) was the original charge and murder was never charged. If a case is charged originally as manslaughter and resolves as a manslaughter, then any P.C. 1170.95 petition should fail at the prima facie stage of the process.

Appointment of Counsel
Adds new paragraph (3) of subdivision (b) to provide that upon receiving a petition that contains the required information, or where any missing information "can readily be ascertained by the court," if the petitioner has requested counsel, the court must appoint counsel to represent the petitioner.

Elimination of Prima Facie Review by the Court Without a Hearing and New Requirement for a Hearing to Determine the Prima Facie Issue
Deletes the provision that had required the court to review the petition and any briefs filed, and determine if the petitioner has made a prima facie showing that he or she falls within the provisions of P.C. 1170.95. (This provision arguably permitted a court to make the prima facie determination without a court hearing, although many judges have been holding hearings and listening to arguments on the issue.)

Adds that after the parties have had an opportunity to submit briefs, the court is required to hold a hearing to determine whether the petitioner has made a prima facie case for relief.

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Continues to provide that if a petitioner makes a prima facie showing of entitlement to relief, the court must issue an order to show cause.

Adds that if the court declines to issue an order to show cause, it must "provide a statement fully setting forth its reasons for doing so."

The Hearing to Determine Entitlement to Relief
Continues to provide that the burden is on the prosecution by the standard of beyond a reasonable doubt.

Adds the following:

1. The prosecution must prove beyond a reasonable doubt that the petitioner is guilty of murder or attempted murder under P.C. 188 and 189 as they were amended by SB 1437, effective January 1, 2019.

2. Admission of evidence is governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed.

3. The court may also consider the procedural history of the case recited in any prior appellate opinion.

4. Hearsay evidence admitted at a preliminary hearing pursuant to P.C. 872(b) must be excluded from the hearing as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule.

5. A finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is *not* sufficient to prove, beyond a reasonable doubt, that the petitioner is not eligible for re-sentencing.

Eliminates language that had permitted the prosecutor and the petitioner to rely on the "record of conviction" to meet their respective burdens.

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Appeals Based on P.C. 1170.95
Permits a person convicted of murder, attempted murder, or manslaughter whose conviction is not final to challenge on direct appeal the validity of that conviction based on the changes to P.C. 188 and 189 made by SB 1437. (This abrogates the California Supreme Court's decision in *People v. Gentile* (2020) 10 Cal.5th 830, which held that SB 1437 does not automatically apply to non-final judgments on direct appeal and that even if a defendant has an appeal pending, he or she must proceed under P.C. 1170.95 by filing a petition, in order to seek SB 1437 relief.)

Reduction of the Parole Period
Reduces, from three to two, the maximum number of years a judge can order a re-sentenced petitioner to be on parole for.

The Legislature's Declaration
Uncodified Section One of this bill sets forth the Legislature's declaration about what this bill does:

> (a) Clarifies that persons who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural probable consequences doctrine are permitted the same relief as those persons convicted of murder under the same theories.
> (b) Codifies the holdings of *People v. Lewis* (2021) 11 Cal.5th 952, 961-970, regarding petitioners' right to counsel and the standard for determining the existence of a prima facie case.
> (c) Reaffirms that the proper burden of proof at a re-sentencing hearing under this section is proof beyond a reasonable doubt.
> (d) Addresses what evidence a court may consider at a resentencing hearing (clarifying the discussion in *People v. Lewis, supra*, at pp. 970-972).

(This is an odd statement. P.C. 1170.95 was very clear that the prosecution and the petitioner could use the record of conviction at a re-sentencing hearing. And *Lewis* did not address what evidence could be used at a re-sentencing hearing. *Lewis* addressed what evidence a court could use to decide whether a petitioner had made a prima facie case for relief, and decided that yes, a court could properly rely on the record of conviction to make that determination. P.C. 1170.95 specifically permitted the prosecution and the petitioner to rely on the record of conviction at a re-sentencing hearing, until this bill deleted that language.)

P.C. 1171
P.C. 1171.1
(New)
(Ch. 728) (SB 483)
(Effective 1/1/2022)

Makes the repeal of H&S 11370.2 three-year drug prior enhancements (SB 180, 2017 legislation, effective 1/1/2018) and P.C. 667.5(b) one-year prison prior enhancements (SB 136, 2019 legislation, effective 1/1/2020) fully retroactive to all defendants currently serving a sentence that includes a repealed enhancement, and requires they be re-sentenced. P.C. 1171 applies to H&S 11370.2 enhancements and P.C. 1171.1 applies to P.C. 667.5(b) enhancements. They contain identical language.

H&S 11370.2 Priors and P.C. 667.5(b) Priors Are Legally Invalid and Must be Reported to the Court
Declares that all H&S 11370.2 enhancements (except those imposed for a H&S 11380 prior conviction, which remains in H&S 11370.2) and all P.C. 667.5(b) enhancements (except those imposed for a sexually violent conviction, which remains in P.C. 667.5(b)) are "legally invalid" and requires the California Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify defendants in custody currently serving a term that includes a repealed H&S 11370.2 enhancement and/or a repealed P.C. 667.5(b) enhancement, and report those cases to the sentencing court.

Deadlines for Reporting Cases to the Court
Requires that cases be reported to the sentencing court by March 1, 2022 where the defendant has served the base term and any other enhancements, and is currently serving the H&S 11370.2 or P.C. 667.5(b) enhancement. Requires all other cases to be reported to the sentencing court by July 1, 2022.

Deadlines for Review and Re-Sentencing by the Court
Requires a court to review reported cases, determine if they included a repealed H&S 11370.2 or P.C. 667.5(b) enhancement, and re-sentence those defendants, by October 1, 2022, for all cases where the base term and other enhancements have been served and the defendants are currently serving the H&S 11370.2 or P.C. 667.5(b) enhancement. Requires review and re-sentencing of all other cases by December 31, 2023.

Plea Agreements Cannot Be Rescinded
Uncodified Section One of the bill sets forth the Legislature's intent that any changes to a sentence as a result of this bill shall not be a basis for a prosecutor or court to rescind a plea agreement.

continued

Appointment of Counsel
Requires the court to appoint counsel.

Re-Sentencing Hearing May Be Waived
Permits the parties to waive a re-sentencing hearing. Provides that if the hearing is not waived, it may be conducted remotely but only if the defendant agrees.

Re-Sentencing Framework
Rather than providing that a court simply eliminate a repealed three-year H&S 11370.2 enhancement or a repealed one-year P.C. 667.5(b) enhancement, the bill sets forth a number of provisions that permit a court to do much more than just delete a repealed enhancement.

Provides that re-sentencing must result in a lesser sentence than the one originally imposed, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Prohibits re-sentencing that results in a longer sentence than the original one.

Requires the court to apply "any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing."

[This may provide authority for the court to apply other recent sentencing changes, such as the authority to strike five-year P.C. 667(a) prior convictions and firearm enhancements pursuant to P.C. 12022.53 and 12022.5, even where a defendant's judgment was final when those changes went into effect.]

Authorizes a court to consider post-conviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence; and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.

Provides that unless the court originally imposed the upper term, the court may not impose a sentence exceeding the

continued

middle term unless there are circumstances in aggravation that justify imposing more than the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at a jury trial or court trial.

(This language is consistent with amendments made by SB 567 to P.C. 1170.)

[H&S 11370.2 was amended by SB 180 in 2017, effective 1/1/2018, to eliminate all enhancements for three-year prior drug convictions, except when the prior conviction is for H&S 11380 (using a minor as an agent to commit a specified drug crime, encouraging a minor to commit a specified drug crime, or furnishing a specified drug to a minor).]

[P.C. 667.5(b) was amended by SB 136 in 2019, effective 1/1/2020, to eliminate all enhancements for one-year prison priors, except when the prison prior is for a sexually violent offense (W&I 6600(b)).]

P.C. 1202.4
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the 10 percent fee that a county was permitted to charge to cover the administrative cost of collecting the restitution fine that a judge is required to impose in every case. Continues to require a judge to order victim restitution. Continues to require the imposition of a restitution fine of between $300 and $10,000 for a felony conviction and between $150 and $1,000 for a misdemeanor conviction, unless the court finds compelling and extraordinary reasons for not imposing the fine and states reasons on the record. Continues to provide that a defendant's inability to pay *shall not be considered* a compelling and extraordinary reason.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them to subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1203.01
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Amends this section to permit an alternative method of delivering documents that the clerk of the court is required to mail with prepaid postage, when a defendant is sentenced to state prison. Permits a clerk to deliver the documents electronically instead of by mail, if the recipient consents in writing, or orally on the record, to receive the documents electronically.

[P.C. 1203.01(a) requires the court clerk to mail to the Department of Corrections and Rehabilitation and to the defense attorney, any statements filed by the judge, district attorney, defense attorney, or law enforcement agency containing their views about the defendant and the crime committed. P.C. 1203.01(b) requires the court clerk to mail to the state prison a defendant is delivered to, documents such as the charging documents and waiver and plea forms.]

P.C. 1203.07
(Amended)
(Ch. 537) (SB 73)
(Effective 1/1/2022)

Eliminates all but two of the circumstances that previously made a defendant convicted of specified drug crimes absolutely ineligible for probation, and converts this section from mandatory probation ineligibility to presumptive probation ineligibility only.

Amended P.C. 1203.07 now provides for probation ineligibility only under the following two circumstances, which previously were P.C. 1203.07(a)(8) and (a)(9):

1. A defendant convicted of violating H&S 11380 by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture or sell a specified controlled substance such as cocaine base and methamphetamine.

2. A defendant convicted of violating H&S 11380 by using a minor as an agent, or soliciting, inducing, encouraging, or intimidating a minor with the intent that the minor violate the provisions of H&S 11378.5, 11379.5 or 11379.6, as these violations relate to phencyclidine (PCP), or its analogs or precursors.

New subdivision (c) provides that a defendant who comes within P.C. 1203.07 may be granted probation in an unusual case where the interests of justice would best be served, and requires a court to specify on the record and enter into the minutes the reasons supporting its finding.

continued

Subdivision (b) continues to require that a fact that makes a defendant ineligible for probation be pled and proved.

Retroactivity
Nothing in SB 73 mentions whether these amendments are prospective or retroactive in application. The general default rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3 and *People v. Brown* (2012) 54 Cal.4th 314, 319.). The exception to the default rule is that when a new law mitigates punishment, it will be presumed to apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740, 745.)

The new version of P.C. 1203.07 will apply prospectively to every pending case on January 1, 2022, even if the crime occurred before 2022. Any defendant sentenced on and after January 1, 2022 will be able to take advantage of the new version of P.C. 1203.07. Whether the new version of P.C. 1203.07 applies retroactively to defendants sentenced before 2022 whose cases are not final as of January 1, 2022, will depend on whether the amendment to P.C. 1203.07 is deemed a lessening of punishment and/or an ameliorative benefit. Based on the retroactivity rulings from the courts over the last few years on a variety of issues (e.g., the shortening of probation periods, the elimination of three-year H&S 11370.2 drug priors, the authority of a court to strike five-year P.C. 667(a) enhancements and P.C. 12022.53 and P.C. 12022.5 firearm enhancements, and the changes to direct filing of juvenile cases in adult court), the courts may rule that the new version of P.C. 1203.07 applies retroactively.

[This bill also amends H&S 11370 to expand probation ineligibility in drug cases and it repeals P.C. 1203.073 to eliminate all of the circumstances in that section that made a defendant presumptively ineligible for probation in a number of drug cases. See the Health & Safety Code section of this digest for more about H&S 11370 and see below for more about P.C. 1203.073.]

P.C. 1203.073
(Repealed)
(Ch. 537) (SB 73)
(Effective 1/1/2022)

Repeals this section in its entirety, which had provided for presumptive probation ineligibility in a number of drug cases. Examples of the types of cases that no longer are subject to presumptive probation ineligibility:

1. A conviction of H&S 11351, 11351.5, or 11352 for possessing for sale, or selling, a substance containing 28.5 grams or more of cocaine or cocaine base, or 57 grams or more of a substance containing at least five grams of cocaine or cocaine base.

2. A conviction of H&S 11378 or 11379 for possessing for sale, or selling, a substance containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine.

3. A conviction of H&S 11379.6, 11382, or 11383 with respect to methamphetamine, if the defendant has one or more prior convictions for H&S 11378, 11379, 11379.6, 11380, 11382, or 11383 with respect to methamphetamine.

Retroactivity
Nothing in SB 73 mentions whether the repeal of P.C. 1203.073 is prospective or retroactive in application. The general default rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3 and *People v. Brown* (2012) 54 Cal.4th 314, 319.). The exception to the default rule is that when a new law mitigates punishment, it will be presumed to apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740, 745.)

The repeal of P.C. 1203.073 will apply prospectively to every pending case on January 1, 2022, even if the crime occurred before 2022. Any defendant sentenced on and after January 1, 2022 will be able to take advantage of the fact that P.C. 1203.073 is repealed.

Whether the repeal applies retroactively to defendants sentenced before 2022 whose cases are not final as of January 1, 2022, will depend on whether the repeal is deemed a lessening of punishment and/or an ameliorative benefit. Based on the retroactivity rulings from the courts over the last few years on a variety of issues (e.g., the shortening of probation periods, the elimination of three-year H&S 11370.2

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drug priors, the authority of a court to strike five-year P.C. 667(a) enhancements and P.C. 12022.53 and 12022.5 firearm enhancements, and the changes to direct filing of juvenile cases in adult court), the courts may rule that the repeal of P.C. 1203.073 applies retroactively.

[This bill also amends H&S 11370 to expand probation ineligibility in drug cases, and it amends P.C. 1203.07 to eliminate all but two circumstances that make a defendant probation ineligible and to convert the section from mandatory probation ineligibility to presumptive probation ineligibility. See the Health & Safety Code section of this digest for more about H&S 11370 and see above for more about P.C. 1203.07.]

P.C. 1203.099
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Extends the sunset date, from July 1, 2022 to July 1, 2023, on this section that authorizes the counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer an alternative domestic violence program that does not comply with the requirements of P.C. 1203.097 and 1203.098.

P.C. 1203.1
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the 15 percent fee that a county was permitted to charge to cover the administrative cost of collecting victim restitution.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1203.1ab
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the provision that had required a court to order a defendant to pay for the cost of drug testing when a defendant convicted of a drug crime was at least age 21, was ordered to submit to testing, and had the ability to pay all or a part of the cost.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new

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V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1203.1c
P.C. 1203.1m
(Repealed)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Repeals these sections that had permitted a court, after a hearing, to order a defendant to pay all or a portion of the costs of incarceration in a county jail, city jail, or other local detention facility (P.C. 1203.1c) or all or a portion of the costs of incarceration in state prison (P.C. 1203.1m).

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1203.2
(Amended)
P.C. 1203.25
(New)
(Ch. 533) (AB 1228)
(Effective 1/1/2022)

Creates a presumption for probation violators to be released on their own recognizance pending a formal violation hearing.

Prohibits a court from denying release for a person on probation for a misdemeanor, unless the probationer fails to comply with an order of the court, including an order to appear in court.

Prohibits a court from denying release for a person on probation for a felony unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the probationer's future appearance in court.

P.C. 1203.2
Amends P.C. 1203.2(a) to require that when a probationer is arrested, with or without a warrant, and with or without the filing of a revocation petition, the court must "consider" releasing the probationer pursuant to new P.C. 1203.25. Does not apply to persons on mandatory supervision, postrelease community supervision, or parole. Existing language in

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P.C. 1203.2(a) continues to provide that the court may order the release of supervisees in these three categories under any terms and conditions the court deems appropriate, and does not link the release to new P.C. 1203.25.

Also amends P.C. 1203.2(a) to eliminate this long-existing ground for probation violation: The probationer "has become abandoned to improper associates or a vicious life."

P.C. 1203.25
Requires Release Before the Court Holds a Formal Probation Revocation Hearing, Unless the Court Makes Specified Findings—Subdivision (d) prohibits a court from denying release for a person on probation for a misdemeanor, unless the probationer fails to comply with an order of the court, including an order to appear in court.

Subdivision (e) prohibits a court from denying release for a person on probation for a felony unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the probationer's future appearance in court.

Own Recognizance Release—Requires all probationers who are released by the court at or after the initial hearing and before a formal probation violation, to be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person's future appearance in court.

Determination of Dangerousness—In order for a court to be able to impose conditions of release when it releases a probationer, the court must make an individualized determination of factors that do or do not indicate the probationer would be a danger to the public if released pending a formal probation violation hearing.
Requires any finding of danger to the public to be based on clear and convincing evidence.

Prohibits the court from requiring the use of any algorithm-based risk assessment tool in setting conditions of release.
Requires the court to impose the least restrictive conditions of release necessary to provide reasonable protection of the

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public and reasonable assurance of the probationer's future appearance in court.

Reasonable Conditions of Release—Provides that reasonable conditions of release include reporting by telephone to a probation officer, protective orders, a global positioning system device, electronic monitoring, or an alcohol use detection device. Prohibits a probationer from being required to pay for any conditions of release.

Bail—Prohibits cash bail from being imposed unless the court finds by clear and convincing evidence that other reasonable conditions of release are not adequate to provide reasonable protection of the public and reasonable assurance of the probationer's future appearance in court. Defines bail as cash bail and provides that "bail" as used in P.C. 1203.25 is *not* a bail bond or a property bond. Requires the court to consider the probationer's ability to pay cash bail, but *not* the probationer's ability to pay a bail bond or a property bond. Requires that bail be set at a level the probationer can reasonably afford.

The Court's Findings—Requires any findings the court makes, where the standard is clear and convincing evidence, to be made orally on the record. Requires findings to be entered upon the minutes if requested by a party in a case that is not being reported by a court reporter.

P.C. 1203.4
(Amended)
(Ch. 209) (AB 1281)
(Effective 1/1/2022)

Adds that the dismissal of a conviction does *not* release the defendant from the terms and conditions of any unexpired criminal protective order that was issued pursuant to P.C. 136.2(i)(1) (a restraining order for up to ten years in favor of the victim of a specified domestic violence, sex, or gang crime); P.C. 273.5(j) (a restraining order for up to ten years in a domestic violence case); P.C. 368(*l*) (a restraining order for up to ten years in an elder abuse, elder fraud, or elder false imprisonment case), or P.C. 646.9(k) (a restraining order for up to 10 years in a stalking case).

Provides that the protective order remains in full force and effect until the expiration date or until it is modified or terminated by court order.

[The purpose of this bill is to eliminate the uncertainty about whether a restraining order remains effective for the term

continued

set by the court, despite the dismissal/expungement of the conviction on which it is based.]

[P.C. 1203.4 permits a court to dismiss/expunge a conviction where a defendant has fulfilled the conditions of probation, or has been discharged prior to the end of the probation period, or when the court finds it is in the interest of justice to dismiss the conviction.]

[This bill makes the same amendment to P.C. 1203.4a, 1203.4b, and 1203.425. See below.]

P.C. 1203.4a
(Amended)
(Ch. 209) (AB 1281)
(Effective 1/1/2022)

and

(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

AB 1281
Adds that the dismissal of a conviction does *not* release the defendant from the terms and conditions of any unexpired criminal protective order that was issued pursuant to P.C. 136.2(i)(1) (a restraining order for up to ten years in favor of the victim of a specified domestic violence, sex, or gang crime); P.C. 273.5(j) (a restraining order for up to ten years in a domestic violence case); P.C. 368(*l*) (a restraining order for up to ten years in an elder abuse, elder fraud, or elder false imprisonment case), or P.C. 646.9(k) (a restraining order for up to ten years in a stalking case).

Provides that the protective order remains in full force and effect until the expiration date or until it is modified or terminated by court order.

[The purpose of AB 1281 is to eliminate the uncertainty about whether a restraining order remains effective for the term set by the court, despite the dismissal/expungement of the conviction on which it is based.]

[P.C. 1203.4a permits a court to dismiss/expunge a conviction where a defendant was convicted of a misdemeanor and not granted probation, or was convicted of an infraction.]

[AB 1281 makes the same amendment to P.C. 1203.4, 1203.4b, and 1203.425. See above and below.]

AB 177
Eliminates the $60 fee that a county was permitted to charge a defendant who petitions for dismissal/expungement of a misdemeanor conviction where probation was not granted.

continued

[AB 177 eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1203.4b
(Amended)
(Ch. 209) (AB 1281)
(Effective 1/1/2022)

Adds that the dismissal of a conviction does *not* release the defendant from the terms and conditions of any unexpired criminal protective order that was issued pursuant to P.C. 136.2(i)(1) (a restraining order for up to 10 years in favor of the victim of a specified domestic violence, sex, or gang crime); P.C. 273.5(j) (a restraining order for up to ten years in a domestic violence case); P.C. 368(*l*) (a restraining order for up to ten years in an elder abuse, elder fraud, or elder false imprisonment case), or P.C. 646.9(k) (a restraining order for up to 10 years in a stalking case).

Provides that the protective order remains in full force and effect until the expiration date or until it is modified or terminated by court order.

[The purpose of this bill is to eliminate the uncertainty about whether a restraining order remains effective for the term set by the court, despite the dismissal/expungement of the conviction on which it is based.]

[P.C. 1203.4b permits a court to dismiss/expunge the conviction of a specified defendant who as an inmate participated in a state or local fire camp program.]

[This bill makes the same amendment to P.C. 1203.4, 1203.4a, and 1203.425. See above and below.]

P.C. 1203.425
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

and

(Amended)
(Ch. 202) (AB 898)
(Effective 1/1/2022)

and

(Amended)
(Ch. 209) (AB 1281)
(Effective 1/1/2022)

AB 145: Expands Automatic Conviction Relief
Expands and makes retroactive the requirement that the Department of Justice review its records and grant automatic conviction relief to specified offenders. Previously, this section applied only to convictions occurring on or after January 1, 2021. It now applies to convictions occurring on or after January 1, 1973. Continues to provide that this section will become operative on July 1, 2022 if there is an appropriation in the annual Budget Act.

AB 898: Automatic Conviction Relief in a Case Where Probation Was Transferred
Adds that if probation is transferred from one county to another pursuant to existing P.C. 1203.9, the DOJ must electronically submit a notice to both the transferring court and to the receiving court when it grants conviction relief.

Requires a receiving court that reduces a felony to a misdemeanor pursuant to P.C. 17(b) or dismisses a conviction pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, to furnish a disposition report to DOJ with the original case number from the transferring court and the CII number. Requires DOJ to electronically submit a notice to the court of conviction. Provides that if probation is transferred multiple times, DOJ must submit the same notice to all involved courts.

Requires a court that receives notice from DOJ about a conviction reduction or dismissal to update its records. Provides that if a conviction is dismissed pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, a court is prohibited from disclosing information about the conviction to anyone other than the defendant in the case and to a criminal justice agency.

Provides that if probation was transferred pursuant to P.C. 1203.9, the prosecuting attorney or the probation department in either the transferring county or the receiving county may file a petition to oppose automatic conviction relief, in the county that currently has jurisdiction over the case (i.e., last receiving county).

Provides that if a court denies DOJ's automatic conviction relief in a case where probation was transferred, DOJ must electronically submit a notice of denial to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

continued

Provides that if a court grants relief pursuant to P.C. 1203.4 (cases in which probation was granted) or 1203.4a (misdemeanor cases where probation was not granted, or infraction cases), in a case where probation was transferred, DOJ must electronically submit a notice to all involved courts.

[The purpose of AB 898 is to make sure that all courts involved in a particular case are notified when a conviction reduction or dismissal happens so that their records can be updated to be accurate.]

[AB 898 also amends P.C. 1203.9 and 13151 (see below). P.C. 1203.9 is amended to require the receiving court to send a "receipt of records" to the transferring court, including the new case number, if any; to require the transferring court to report to DOJ that probation was transferred, once the receiving court accepts the transfer; and to require that a probation transfer report identify the receiving court and the new case number, if any. P.C. 13151 is amended to require a court that transfers probation pursuant to existing P.C. 1203.9 to report the transfer to DOJ, once the case has been accepted by the receiving court, and to identify to DOJ the receiving superior court and the new case number, if any.]

[It is not clear why the amendments specify only probation and not mandatory supervision, since P.C. 1203.9 applies to both forms of supervision and both forms of supervision may be transferred from one county to another.]

AB 1281
Adds that the dismissal of a conviction does *not* release the defendant from the terms and conditions of any unexpired criminal protective order that was issued pursuant to P.C. 136.2(i)(1) (a restraining order for up to ten years in favor of the victim of a specified domestic violence, sex, or gang crime); P.C. 273.5(j) (a restraining order for up to ten years in a domestic violence case); P.C. 368(*l*) (a restraining order for up to ten years in an elder abuse, elder fraud, or elder false imprisonment case), or P.C. 646.9(k) (a restraining order for up to ten years in a stalking case).

Provides that the protective order remains in full force and effect until the expiration date or until it is modified or terminated by court order.

continued

The purpose of AB 1281 is to eliminate the uncertainty about whether a restraining order remains effective for the term set by the court, despite the dismissal/expungement of the conviction on which it is based.]

[AB 1281 makes the same changes to P.C. 1203.4, 1203.4a, and 1203.4b. See above.]

P.C. 1203.9
(Amended)
(Ch. 202) (AB 898)
(Effective 1/1/2022)

and

(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

AB 898
Amends this section that applies to the transfer of probation or mandatory supervision from one county to another, by:

1. Requiring the receiving court to send a "receipt of records" to the transferring court, including the new case number, if any; and
2. requiring the transferring court to report to the Department of Justice (DOJ) that probation was transferred, once the receiving court accepts the transfer. Requires that a probation transfer report identify the receiving court and the new case number, if any.

[It is not clear why the amendments specify only probation and not mandatory supervision, since P.C. 1203.9 applies to both forms of supervision and both forms of supervision may be transferred from one county to another.]

[The purpose of these amendments is so that DOJ can notify both the transferring county (the county of conviction) and the receiving county (which, without notification, DOJ would be unaware of) when it grants automatic conviction relief pursuant to P.C. 1203.425, so that the records of both counties are accurate.]

[AB 898 also amends P.C. 1203.425 (see above) and 13151 (see below).]

AB 177
Eliminates the provision that had permitted a receiving court and receiving probation department to impose additional local fees and costs.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the

continued

loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1205
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the fee that a defendant had been required to pay to the clerk of the court for the processing of fine payments.

P.C. 1205(a) continues to provide that a defendant may serve out a fine in jail at $125 per day, but not for victim restitution or a restitution fund fine. P.C. 1205(b) continues to set forth how a fine should be paid (to the clerk of the court, unless the clerk turns over collection to another county department).

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1209.5
(Amended)
(Ch. 598) (SB 71)
(Effective 1/1/2022)

Authorizes a court to permit a defendant convicted of an infraction to participate in an educational program instead of performing community service hours. Provides that an educational program includes high school or GED classes, college courses, literacy or English as a second language programs, and vocational programs.

Continues to provide that the court must permit a defendant convicted of an infraction to perform community service instead of pay a fine, if the defendant shows that payment of the fine would pose a hardship on the defendant or defendant's family. Now, instead of performing community service, the court may permit participation in an educational program.

P.C. 1214.5
(Repealed)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Repeals this section that had permitted a judge, when ordering more than $50 in victim restitution as a condition of probation, to order the defendant to pay 10 percent interest.

continued

However, P.C. 1202.4(f)(3)(G) continues to list 10 percent interest as an item to be included in a victim restitution order. P.C. 1202.4(f)(3) requires that a 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 criminal conduct, including, but not limited, to, all of the following: …
(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court."

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1233.3
P.C. 1233.4
P.C. 1233.6
(Amended)
P.C. 1233.11
(New)
P.C. 1233.61
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Changes the funding for probation departments for the 2021-2022 fiscal year. Instead of the Director of Finance calculating a statewide performance incentive payment and a county performance incentive payment based on specified performance metrics, AB 145 appropriates $122,829,397 from the General Fund to the State Community Corrections Performance Incentives Fund, to be allocated to counties. New P.C. 1233.11 sets forth how much each of the 58 counties will receive.

P.C. 1276.1
(New)
(Ch. 444) (AB 1347)
(Effective 1/1/2022)

Prohibits the practice of charging renewal premiums on bail bonds and immigration bonds.

Provides that on and after January 1, 2022 for bail bonds, and on and after July 1, 2022 for immigration bonds, an insurer, bail agent, bail licensee, or insurance licensee is prohibited from entering into a contract or agreement that requires the payment of more than one premium for the duration of the agreement, which shall be until bail is exonerated, and, is prohibited from charging or collecting a renewal premium on any existing bail bond or immigration bond.

continued

(A renewal premium is typically collected every 12 months.)

Provides that a violation of this new section makes the violator liable to the person affected for all damages the person may sustain, plus statutory damages of $3,000. If the person affected prevails, he or she is entitled to recover court costs and reasonable attorney's fees.

P.C. 1370
(Amended)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Adds procedures for the State Department of State Hospitals to conduct evaluations of defendants in county custody who have been declared incompetent to stand trial.

Evaluations by DSH (P.C. 1370(a)(1)(H))
Authorizes the State Department of State Hospitals (DSH), pursuant to new W&I 4335.2, to conduct an evaluation of a defendant in county custody who has been declared incompetent to stand trial, to determine any of the following:

1. Whether the defendant has regained competence;
2. whether there is no substantial likelihood that the defendant will regain competence in the foreseeable future; and/or
3. whether the defendant should be referred to the county for further evaluation for potential participation in a diversion program, if one exists, or to another outpatient treatment program.

(New W&I 4335.2 permits DSH, beginning July 1, 2021, to conduct in-person or remote re-evaluations of defendants found incompetent to stand trial.)

Provides that if in the opinion of the DSH expert the defendant has regained competence, the court must proceed as if a certificate of restoration of competence has been returned pursuant to P.C. 1372(a)(1), except that a presumption of competency will not apply and a hearing must be held to determine whether competency has been restored.

Provides that if in the opinion of the DSH expert there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court must proceed pursuant to P.C. 1370(c)(2) no later than 10 days following the receipt of the report.

continued

(The cross-reference to subdivision (c)(2) may be a drafting error. Before this bill amended P.C. 1370, subdivision (c)(2) provided that if it appears to the court that a defendant is gravely disabled, the court must order a conservatorship investigator of the county of commitment to initiate conservatorship proceedings. The conservatorship provision is now in subdivision (c)(**3**). Subdivision (c)(2) is new and provides that the medical director of DSH must notify the county sheriff to transport a defendant from the custody of DSH to the committing county when a defendant has not recovered mental competence and the defendant's term of commitment is close to expiring. New subdivision (c)(2) also provides that if a county does not take custody of a defendant committed to DSH within 10 calendar days of being notified that the defendant needs to be transported, the county will be charged the daily rate for a state hospital bed.)

County Must Provide DSH With Access to Defendants (P.C. 1370(b)(1))
Subdivision (b) continues to provide that within 90 days after a commitment is made based on mental incompetence, DSH or the facility in which the defendant is confined must make a written report to the court and the community program director for the county or region of commitment, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary.

Subdivision (b) is amended to add that if the defendant is in county custody, the county jail must provide access to the defendant so that DSH can conduct an evaluation pursuant to new W&I 4335.2.

[W&I 4335.2 permits DSH, beginning July 1, 2021, to conduct in-person or remote re-evaluations of defendants found incompetent to stand trial. See the Welfare & Institutions Code section of this digest for more information.]

Written Report by DSH (P.C. 1370(b)(1))
Authorizes DSH, after making a W&I 4335.2 evaluation, to make a written report to the court within 90 days of a commitment, about the defendant's progress toward recovery of "mental **in**competence" and whether administration of antipsychotic medication is necessary.

continued

[The use of the word "incompetence" rather than "competence" appears to be a drafting error.]

Goes on to provide that if the defendant remains in county custody *after* the initial 90-day report, the State Department of State Hospitals may conduct an evaluation of the defendant pursuant to W&I 4335.2 and make a written report to the court concerning the defendant's progress toward recovery of "mental incompetence" and whether the administration of antipsychotic medication is necessary.

[Apparently DSH is authorized to do two W&I 4335.2 evaluations: One within 90 days of the commitment and a second one after the 90-day report. The use (again) of the word "incompetence" instead of "competence" is a drafting error.]

Court Prohibited From Ordering Defendant Returned to DSH (P.C. 1370(b)(1)(A))
Provides that if the report indicates there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the court is prohibited from ordering the defendant returned to DSH custody under the same commitment. Instead, the defendant must be transferred to the committing county and remain there until further order of the court.

County Must Pay Daily Hospital Bed Rate if a Defendant Is Picked Up Late (P.C. 1370(b)(1)(C))
Provides that if a county does not take custody of a defendant committed to DSH within ten calendar days of DSH notifying the county sheriff to pick up the defendant, the county will be charged the daily rate for a state hospital bed.

When a Defendant's Commitment Is Close to Ending (P.C. 1370(c)(1) and (c)(2))
Continues to provide that at the end of two years from the date of commitment, or the maximum term of imprisonment provided by law whichever is shorter, but no later than 90 days before commitment expiration, a defendant who has not recovered mental competence must be returned to the committing court.

continued

Adds that the custody of the defendant shall be transferred without delay and prohibits the court from ordering the defendant returned to DSH under the same commitment.

Also adds that the medical director of DSH must notify the county sheriff to transport a defendant from the custody of DSH to the committing county. If a county does not take custody of a defendant committed to DSH within ten calendar days of being notified that the defendant needs to be transported, the county will be charged the daily rate for a state hospital bed.

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370.01 and 1372 and amends or adds 400+ other sections, including new W&I 4147 and new W&I 4335.2. See below for the amendments to P.C. 1370.01 and 1372. New W&I 4147 creates a group to work on alternatives to DSH placement for mentally incompetent defendants. New W&I 4335.2 permits DSH to conduct re-evaluations of defendants declared incompetent to stand trial. See the Welfare & Institutions Code section of this digest for more information about both.]

P.C. 1370.01
(Amended)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Revises the procedures when a defendant is found mentally incompetent to stand trial on misdemeanor charges. (Existing P.C. 1367 continues to provide that P.C. 1370.01 applies to defendants charged with misdemeanor crimes.)

and

AB 133 (Chapter 143) is effective from 7/27/2021 through 12/31/2021. On January 1, 2022, the new version of P.C. 1370.01 in Senate Bill 317 (Chapter 599) becomes effective.

(Repealed & Added)
(Ch. 599) (SB 317)
(Effective 1/1/2022)

SB 317 (Chapter 599, Effective January 1, 2022)

Overview—SB 317 repeals P.C. 1370.01 in its entirety, and adds a new and much shorter version.

Provides that if a defendant is found mentally incompetent, the trial, judgment, or hearing must be suspended and the court may do either of the following:

1. Conduct a mental disorder diversion hearing pursuant to P.C. 1001.36; or
2. dismiss the charges pursuant to P.C. 1385.

continued

Provides that if a defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court "shall" dismiss the pending revocation matter and may return the defendant to supervision. Provides that if the probation violation is dismissed, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

Subdivision (d) provides that it is the intent of the Legislature that a defendant subject to P.C. 1370.01 receive mental health treatment in a treatment facility and not a jail. Subdivision (d) also grants credit for time served in jail against the period of diversion by providing that "[a] term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion." Provides that a defendant **not** in actual custody shall receive day for day credit against the term of diversion from the date the defendant is accepted into diversion.

P.C. 1001.36 limits mental disorder diversion to a maximum of two years. But this bill limits the length of diversion to a maximum of one year when a misdemeanor defendant is found incompetent and then diverted. If credits apply toward the diversion period, this means that a misdemeanor defendant declared incompetent could be on diversion for less than one year.

If the Court Conducts a Mental Disorder Diversion Hearing Pursuant to P.C. 1001.36 and Finds the Defendant Eligible— Requires the diversion hearing to be held no later than 30 days after the finding of incompetence. Provides that if the hearing is delayed beyond 30 days (apparently for any reason), the court must order the defendant to be released on his or her own recognizance pending the hearing.

Requires dismissal of the charges at the end of the diversion period if the defendant performs satisfactorily.

Limits the diversion period to a maximum of one year, despite P.C. 1001.36 providing that diversion may last for up to two years, by providing that diversion may be granted for up to one year from the date the defendant is accepted into diversion, or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter. This means that if a defendant's most serious offense is misdemeanor

continued

carrying a six-month maximum jail sentence, diversion would last for no more than six months, and may be even shorter if credits apply.

If the Court Conducts a Mental Disorder Diversion Hearing Pursuant to P.C. 1001.36 and Finds the Defendant NOT Eligible—If a defendant is found not eligible for mental disorder diversion, the court "may" hold a hearing to determine whether to:

1. Order modification of the treatment plan in accordance with a recommendation from the treatment provider; or
2. refer the defendant to assisted outpatient treatment pursuant to W&1 5346 (which is part of the Assisted Outpatient Treatment Demonstration Project.) Requires a hearing to determine eligibility for assisted outpatient treatment to be held within 45 days of the referral and if the hearing is delayed beyond 45 days, the defendant, if in jail, must be released on his or her own recognizance. Provides that if the defendant is accepted into assisted outpatient treatment, the charges must be dismissed pursuant to P.C. 1385; or
3. refer the defendant to a county conservatorship investigator for conservatorship proceedings. Permits this referral only if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in W&I 5008(h)(A)(1) (*i.e.*, as a result of a mental health disorder, the defendant is not able to provide for his or her basic personal needs for food, clothing, or shelter). Requires the public guardian to investigate all available alternatives to conservatorship. Provides that if a conservatorship petition is not filed within 60 days of the referral, the defendant, if in jail, must be released on his or her own recognizance pending the conservatorship proceedings. Provides that if a conservatorship is established, the charges must be dismissed pursuant to P.C. 1385.

[This bill also amends P.C. 4019 to add state hospitals and mental health treatment facilities to those places (county jail treatment facilities) where a defendant earns conduct credits of four days for every two days spent in actual custody, when the defendant is confined in or committed to such a place while undergoing competency proceedings. See P.C. 4019, below, for more information.]

continued

[Note that this new version of P.C. 1370.01 eliminates all provisions related to antipsychotic medication, to telehealth evaluations by the State Department of State Hospitals (DSH), and to written reports to the court concerning the defendant's progress toward recovery of mental competence.]

AB 133 (Chapter 143, Effective 7/27/21 – 12/31/21)
Continues to provide that if a misdemeanant is found incompetent to stand trial, the court shall order that the defendant be delivered to a public or private treatment facility approved by the county mental health director or placed on outpatient status.

State Hospital Admissions—Eliminates the provision in P.C. 1370.01(a)(3)(A) that had permitted admitting a defendant to a state hospital if the county mental health director finds there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of State Hospitals (DSH) for these placements.

Substantial Evidence That a Defendant's Mental Health Has Changed (P.C. 1370.01(a)(7))–Adds a new paragraph (7) in subdivision (a) to provide that if at any time a defense attorney, jail medical provider, or mental health staffer provides 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 about the defendant's current competence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. Authorizes DSH to conduct an evaluation of a defendant in county custody pursuant to new W&I 4335.2.

[New W&I 4335.2 permits DSH, beginning July 1, 2021, to conduct re-evaluations of defendants found incompetent to stand trial. See the Welfare & Institutions Code section of this digest for more information.]

Provides that if the expert believes that the defendant has regained competence, the court must proceed as if a certificate of restoration of competence has been returned pursuant to existing P.C. 1372(a)(1), except that a presumption of competency will not apply and a hearing must be held to determine whether competency has been restored.

continued

Remote Telehealth Evaluations by DSH (P.C. 1370.01(b))— Provides that if within 90 days of a commitment a defendant is in county custody, DSH may conduct a remote telehealth evaluation of the defendant pursuant to new W&I 4335.2 and make a written report to the court concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary. (Continues to require the medical director of a treatment facility a defendant is confined in to make a written report to the court within 90 days of a commitment.)

Also provides that if a defendant remains in county custody after the initial 90-day report, DSH may conduct a remote telehealth evaluation of the defendant pursuant to new W&I 4335.2 and make a written report to the court concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary. (Apparently DSH is authorized to do two W&I 4335.2 evaluations: One within 90 days of the commitment and a second one after the 90-day report.)

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370 and 1372, and amends or adds 400+ other sections, including new W&I 4147 and new W&I 4335.2. New W&I 4147 creates a group to work on alternatives to DSH placement for mentally incompetent defendants. New W&I 4335.2 permits DSH to conduct re-evaluations of defendants declared incompetent to stand trial. See the Welfare & Institutions Code section of this digest for more information about both.]

P.C. 1372
(Amended)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Provides that a certificate of restoration certifying that a defendant has regained mental competence includes a certificate of restoration filed by the State Department of State Hospitals (DSH) based on an evaluation conducted pursuant to new W&I 4335.2.

Provides that a defendant in county custody who has been evaluated by DSH pursuant to W&I 4335.2 and for whom a certificate of restoration has been filed with the court, shall remain in county custody.

[W&I 4335.2 permits DSH, beginning July 1, 2021, to conduct re-evaluations of defendants found incompetent to stand trial.]

continued

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370 and P.C. 1370.01, and amends or adds 400+ other sections, including new W&I 4147 and new 4335.2. See above for the amendments to P.C. 1370 and 1370.01. New W&I 4147 creates a group to work on alternatives to DSH placement for mentally incompetent defendants. New W&I 4335.2 permits DSH to conduct re-evaluations of defendants declared incompetent to stand trial. See the Welfare & Institutions Code section of this digest for more information about both.]

P.C. 1385
(Amended)
(Ch. 721) (SB 81)
(Effective 1/1/2022)

Adds a new subdivision (c) to require a court to dismiss an enhancement **if** it is in the furtherance of justice to do so, unless dismissal is prohibited by an initiative statute. Provides that this new subdivision applies only to sentencings occurring on and after January 1, 2022.

A Court Must Afford Great Weight to the Evidence Offered by a Defendant
Skews sentencing in favor of dismissing enhancements by requiring a court to "afford great weight" to the evidence offered by a defendant to prove specified mitigating circumstances.

Provides that proof of one or more of the specified circumstances weighs greatly in favor of dismissing the enhancement unless the court finds that dismissal would endanger public safety. Defines "endanger public safety" as "a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others."

Note the bill says nothing about aggravating factors that might be presented by the prosecution or how they are to be weighed by the court, and nothing about the impact of the crime(s) on the victim(s).

Timing
Permits the court to exercise its dismissal discretion before, during, or after trial or entry of plea.

Mitigating Circumstances
P.C. 1385(c) specifies these nine mitigating factors:

1. Application of the enhancement would result in a discriminatory racial impact as described in P.C. 745(a)(4) (e.g., would result in a longer or more severe sentence being imposed on the defendant than was imposed on other similarly situated defendants

continued

convicted of the same offense and where longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in that county.)

2. Multiple enhancements are alleged in a single case. Provides that "[i]n this instance, all enhancements beyond a single enhancement shall be dismissed."*

   [This factor is not clear and the bill does not define "enhancement." For example, it does not distinguish between a one-count case that has two enhancements (e.g., a P.C. 245(a)(1) with a 12022.5 firearm enhancement and a 12022.7 great bodily injury enhancement) and a case that has multiple counts and victims where each count has only one enhancement (e.g., a seven-count robbery case where each count has a P.C. 12022.53(a) firearm enhancement).]

3. The application of the enhancement could result in a sentence of over 20 years. Provides that "[i]n this instance, the enhancement shall be dismissed."*

* *A Note About the Word "Shall" in #2 and #3 Above:* The word "shall" in P.C. 1385(c)(3)(B) (#2 above) and 1385(c)(3)(C) (#3 above) is inconsistent with the language in 1385(c)(2) that leaves the court with discretion regarding dismissing or not dismissing an enhancement, despite requiring that a defendant's evidence be given great weight.

An earlier version of this bill contained a presumption in favor of dismissing an enhancement if certain circumstances were present. Late in the legislative session, the presumption was eliminated from the bill and replaced with language requiring a court to give great weight to the evidence offered by a defendant. The word "shall" in both P.C. 1385(c)(3)(B) and (C) should have been eliminated when the presumption was eliminated. The author of the bill, Senator Nancy Skinner, sent a letter to the Secretary of the Senate on September 10, 2021, clarifying the intent for the bill. In the letter, Senator Skinner explains that the "great weight" standard replaced the presumption, that the "retention of the word 'shall' in P.C. 1385(c)(3)(B) and (C) should not be read as a retention of the previous presumption language," and that "the judge's discretion [to dismiss or not dismiss an enhancement] is preserved."

continued

The Senator's letter, along with the discretion language in P.C. 1385(c)(2) ("In exercising its discretion under this subdivision, the court …") should be ample evidence that the court is *not required* to dismiss an enhancement in a multiple-enhancement case or when the application of an enhancement could result in a sentence of over 20 years.

4. The current offense is connected to a mental illness.

   Provides that a mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but **excluding** antisocial personality disorder, borderline personality disorder, and pedophilia. (This is the same definition as for mental disorder diversion in P.C. 1001.36.)

   Permits a court to conclude that a defendant's mental illness was connected to the offense if, after reviewing any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health provider, medical records, records or reports of qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental illness substantially contributed to the defendant's involvement in the commission of the offense. (This is the same standard as for mental disorder diversion in P.C. 1001.36.)

5. The current offense is connected to prior victimization or childhood trauma.

   Provides that "prior victimization" means the defendant was a victim of intimate partner violence, sexual violence, or human trafficking, or has experienced psychological or physical trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

   Permits a court to conclude that a defendant's prior victimization was connected to the offense if, after reviewing any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's prior victimization substantially contributed to the defendant's involvement in the commission of the offense.

continued

Provides that "childhood trauma" means that as a minor, the defendant experienced physical, emotional, or sexual abuse, or physical or emotional neglect.

Permits a court to conclude that a defendant's childhood trauma was connected to the offense, if, after reviewing any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's childhood trauma substantially contributed to the defendant's involvement in the commission of the offense.

6. The current offense is not a violent felony as defined in P.C. 667.5(c).

7. The defendant was a juvenile when the current offense was committed, or, the enhancement or enhancements in the case are triggered by a prior juvenile adjudication.

   [Note that a strike prior is **not** an enhancement, and therefore a strike prior allegation based on a juvenile adjudication does not qualify as a mitigating circumstance. Numerous cases have held that the strike law is not an enhancement. It is an alternative sentencing provision for recidivists that sets the term for a particular crime. See *People v. Allison* (1995) 41 Cal.App.4th 841, 844 and *People v. Murillo* (1995) 39 Cal.App.4th 1298, 1306.]

8. The enhancement is based on a prior conviction that is over five years old.

   [The bill does not specify how the five years is to be calculated, but does say that the prior "conviction" (not the commission date of the prior crime) cannot be more than five years old. It would be logical to count the five years from the date of the prior conviction to the commission date of the current offense (rather than the sentencing date of the current offense). What is relevant here is that the defendant's current criminal activity is not more than five years beyond the prior conviction date. And if the conviction or sentencing date in the *new* case is used, a defendant could manipulate this factor by delaying the current case in order to create a staleness problem with the prior conviction.]

9. Though a firearm was used in the current offense, it was inoperable or unloaded.

continued

The Specified Mitigating Circumstances Are Not Exclusive
Provides that the above listed mitigating circumstances are not exclusive, and that the court maintains authority to dismiss or strike an enhancement pursuant to existing subdivision (a) in P.C. 1385. (This is simply a re-statement of existing law in 1385(a). The amendments made by this bill do not affect the court's general dismissal authority in the furtherance of justice pursuant to P.C. 1385(a).)

No Definition of "Enhancement" Is Provided
Note that the bill does not provide a definition of "enhancement," and this may be the subject of litigation. Existing P.C. 1170.11 lists a number of "specific enhancements," and defines the term as an enhancement that relates to the circumstances of the crime.

Prohibited Dismissals
New P.C. 1385(c) prohibits the dismissal of an enhancement if dismissal is prohibited by an initiative statute. While these may not qualify as enhancements for purposes of new P.C. 1385(c), examples are P.C. 667.61(g) (the one-strike sexual assault law, Proposition 83), 667.71(d) (the habitual sex offender law, Proposition 83), and 1385.1 (prohibiting the striking or dismissal of murder special circumstances admitted or found true, Proposition 115). And all three prohibit dismissal "notwithstanding Section 1385."

P.C. 1170(f) provides that any allegation that a defendant is eligible for state prison (and therefore is not eligible for a county jail 1170(h) Realignment sentence) because of a current or prior conviction, a sentence enhancement, or a requirement to register as a sex offender, is not subject to P.C. 1385 dismissal.

P.C. 1428.5
(New)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

Authorizes courts to conduct proceedings remotely, including arraignments and trials, for all infractions. Requires that a court obtain a defendant's consent for remote proceedings and permits a court to require the physical presence of any witness or party in court for a particular proceeding.

Provides that this new section does not apply to felonies or misdemeanors.

Authorizes the Judicial Council to adopt rules of court to implement this section.

continued

[This bill also adds new Gov't C. 68645–68645.7 to provide for the online adjudication of infraction violations and the online determination of a defendant's ability to pay. See the Government Code section of this digest.]

P.C. 1463.007
(Amended)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

Amends this section, which pertains to county and court comprehensive collection programs for fines, fees and penalties, to add that such a program must also administer non-delinquent installment payment plans ordered pursuant to new Gov't C. 68645.2, and may charge up to $35 for each non-delinquent installment plan.

[This bill also adds new Gov't C. 68645–68645.7 to provide for the online adjudication of infraction violations and the online determination of a defendant's ability to pay. See the Government Code section of this digest.]

P.C. 1463.07
(Repealed)
(Ch. 257) (AB 177)
(Effective 9/23/2021)

Repeals this section that had required, upon conviction, a $25 administrative screening fee to be collected from every person arrested and released on his or her own recognizance, and a $10 citation processing fee to be collected from each person cited and released by a peace officer in the field or at a jail facility.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1465.9
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Provides that the balance of any court-imposed costs pursuant to the following sections are unenforceable and uncollectible and that any portion of a judgment imposing these costs shall be vacated: P.C. 1001.15, 1001.16, 1001.90, 1202.4, 1203.1, 1203.1ab, 1203.1c, 1203.1m, 1203.4a, 1203.9, 1205, 1214.5, 1463.07, 2085.5, 2085.6, and 2085.7.

[See above and below for more information on each of these sections.]

continued

[In 2020, AB 1869 created P.C. 1465.9 and listed a number of Penal Code sections for which, effective July 1, 2021, any court-imposed costs would be unenforceable, uncollectible, and subject to being vacated. This year's AB 177 adds to that list.]

[This bill also allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021–2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 1473.7
(Amended)
(Ch. 420) (AB 1259)
(Effective 1/1/2022)

Expands the ability of a convicted defendant who is no longer in criminal custody to file a motion to vacate a conviction or sentence based on adverse immigration consequences, even if the defendant was convicted at trial rather than by a plea of guilty or nolo contendere.

Previously, a defendant could move to vacate a conviction or sentence on the ground that it was legally invalid "due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." Now a defendant can move to vacate a conviction or sentence on adverse immigration grounds, even if the defendant did not plead guilty or no contest, and instead took the case to trial.

P.C. 1485.5
P.C. 1485.55
(Amended)
(Ch. 490) (SB 446)
(Effective 1/1/2022)

Amends P.C. 1485.5 to change "in considering" a petition for habeas corpus to "during proceedings" on a petition for habeas corpus. Subdivision (c) now provides that "[i]n a contested or uncontested proceeding, the express factual findings made by the court, including credibility determinations, *during proceedings* on a petition for habeas corpus, a motion to vacate judgment pursuant to P.C. 1473.6, or an application for a certificate of factual innocence, shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board."

Amends P.C. 1485.55 to add uncontested proceedings to those proceedings (contested proceedings), where, if the court has granted a writ of habeas corpus or has vacated a judgment pursuant to P.C. 1473.6 (newly discovered evidence of fraud, false testimony, or misconduct by a

continued

government official), and the court has found the person factually innocent, that finding shall be binding on the California Victim Compensation Board. Adds, regarding a finding of factual innocence, that the court's finding of factual innocence may be "under any standard of factual innocence applicable in those proceedings."

[This bill also amends P.C. 4900, 4902, 4903, and 4904 to change the procedures for wrongful conviction compensation claims by shifting the burden to the Attorney General in specified cases to prove by clear and convincing evidence that the claimant committed the acts constituting the offense and therefore is not entitled to compensation. See below for more information.]

P.C. 2042.1
(New)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Closes Deuel Vocational Institution state prison by providing that P.C. 2035–2042 will become inoperative on October 1, 2021 and be repealed on July 1, 2022.

P.C. 2053.1
(Amended)
(Ch. 766) (SB 416)
(Effective 1/1/2022)

Provides that a state prison inmate who is enrolled in a full-time college program (12 semester units) leading to an associate or bachelor's degree must be deemed by the Department of Corrections and Rehabilitation (CDCR) to be assigned to full-time work or training.

Requires CDCR to make college programs available at every state prison for the benefit of inmates who have obtained a general education development (GED) certificate or equivalent, or a high school diploma. (Previously the language in this section required CDCR to "offer college programs through voluntary education programs or their equivalent.")

Requires that college programs be provided only by California Community Colleges, the California State University, the University of California, or other regionally accredited nonprofit colleges or universities.

Requires CDCR to prioritize colleges and universities that provide a number of things, including face-to-face, classroom-based instruction; comprehensive in-person student supports, including counseling, advising, tutoring, and library services; transferable degree-building pathways;

continued

real-time student-to-student interaction and learning; no charge for tuition or course materials; and waiving or offering grant aid to cover tuition and course materials.

P.C. 2085.5
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the 10 percent administrative fee that could be collected from a state prison inmate's wages and trust account to cover the cost of collecting victim restitution or a restitution fine.

Eliminates the 10 percent administrative fee that could be collected from county jail inmates to cover the cost of collecting victim restitution or a restitution fine.

Eliminates the 10 percent administrative fee that could be collected from a parolee to cover the cost of collecting victim restitution or a restitution fine.

This section continues to require a deduction of 20% to 50% of a state prison inmate's wages and trust account to pay victim restitution and/or a restitution fine. It also continues to authorize a deduction of 20% to 50% of a county jail inmate's wages and trust account to pay victim restitution and/or a restitution fine.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) in existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 2085.6
P.C. 2085.7
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

P.C. 2085.6
Eliminates the 10 percent administrative fee that was permitted to be imposed on a defendant being supervised on postrelease community supervision or mandatory supervision, to cover the cost of collecting victim restitution or a restitution fine.

P.C. 2085.7
Eliminates the 10 percent administrative fee that was permitted to be imposed on a defendant who has finished

continued

the in-custody portion of a P.C. 1170(h) jail sentence, to cover the cost of collecting victim restitution or a restitution fine.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by adding them as subdivision (b) of existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

P.C. 2603
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Extends the sunset date on the current version of this section, from January 1, 2022 to January 1, 2025 and delays to January 1, 2025, the effective date on the version that was supposed to be effective on January 1, 2022. (P.C. 2603 has to do with the administration of psychiatric medication to county jail inmates.)

P.C. 2905
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Requires the Department of Corrections and Rehabilitation (CDCR) to automatically grant a youth offender a lower security level than the level that corresponds with the offender's classification score, or placement in a facility that permits increased access to programs, except for an offender who has committed a serious in-custody offense. Previously this section required CDCR only to consider placement at a lower security level. Continues to provide that "youth offender" is an inmate under 22 years of age.

P.C. 2933.7
(New)
(Ch. 579) (AB 292)
(Effective 1/1/2022)

Requires the Department of Corrections and Rehabilitation (CDCR) to conduct programming in the following manner, in order to foster greater participation in rehabilitative programming and to reduce interruptions in the growth, self-exploration, improvement, and skill building of inmates:

1. Minimize transfers between facilities and prioritize voluntary facility transfers first;
2. prioritize the resumption of programming for an inmate who is transferred for non-adverse reasons;
3. offer programming to the greatest extent possible, even if the facility is restricting in-person programming for security or medical reasons;

continued

4. ensure alternatives to in-person programming are offered;
5. minimize programming waitlist times to the greatest extent possible, by, among other things, increasing virtual or in-person programming opportunities;
6. minimize conflicts with an inmate's work schedule;
7. make programming accessible in a timely manner to inmates who have recently changed status, security level, or facility; and
8. offer a variety of programming opportunities to inmates regardless of security level or sentence length.

P.C. 3000.02
(Amended)
(Ch. 59) (AB 644)
(Effective 1/1/2022)

Expands the type of substance abuse program that a parolee can participate in through the California MAT (medically assisted therapy) Re-Entry Incentive Program in order to be eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction. Instead of requiring enrollment in or successful participation in an "institutional" substance abuse program, the parolee must now enroll in or successfully participate in a "post-release" substance abuse program.

[According to the legislative history of the bill, opponents are concerned about parolees using for-profit, non-institutional addiction treatment providers that are not licensed by the State of California. Opponents also say the state does not screen addiction treatment program owners and staff, and that the state does not have requirements for drug-use testing for owners and staff.]

P.C. 3007.05
(Amended)
(Ch. 645) (SB 629)
(Effective 1/1/2022)

Expands the California Identification Card program, which requires the Department of Corrections and Rehabilitation (CDCR) and the Department of Motor Vehicles (DMV) to ensure that released state prison inmates have a valid identification card.

Expands the program:

1. To include inmates who have not previously held a California driver's license or identification card;
2. to include inmates who do not have a usable photo on file with the DMV that is not more than 10 years old, by

continued

requiring that a new photo be taken if the old photo is deemed unusable;
3. by eliminating the requirement that an inmate have no outstanding fees due for a prior identification card; and
4. to authorize CDCR and DMV to provide a renewed driver's license instead of an identification card, if the inmate meets specified criteria.

Limits the fee for an original or replacement identification card to that set forth in V.C. 14902(h): $8. [This bill amends V.C. 14902 to add a new subdivision (h), which sets the $8 fee for state prison inmates.]

Provides that if a valid identification card is not obtained before release, CDCR must provide the inmate with a "photo prison identification card."

P.C. 3041.6
(New)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Authorizes the Board of Parole Hearings to conduct proceedings by videoconference. Provides that all references in P.C. 3040–3073.1 and in 2960–2981 to a participant's statutory right to meet, be present, appear, or to represent the interests of the People or another participant at a proceeding shall be satisfied by videoconference.

P.C. 3042
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Eliminates trial judges from the list of those persons (district attorney, defense attorney, the law enforcement agency that investigated the case) who must be notified by the Board of Parole Hearings at least 30 days before the Board meets to review or consider the parole suitability of an inmate serving a life sentence. Eliminates the paragraph permitting trial judges to send information to the Board pertaining to whether parole should be granted or under what conditions parole should be granted.

However, P.C. 3042(e) continues to require that the Board review and consider information received from *any* person. Therefore, if the judge who tried the inmate learns that the inmate is being considered for parole, it appears the judge could send information to the Board and the Board would be required to consider it.

P.C. 3056
(Amended)
(Ch. 18) (SB 92)
(Effective 5/14/2021)

Provides that until July 1, 2021, a parole violator who is under 18 years of age may be housed in a facility of the Division of Juvenile Justice, Department of Corrections and Rehabilitation.

P.C. 4011.11
(Amended)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Adds a new subdivision (h) to require, beginning January 1, 2023, that the board of supervisors in each county, in consultation with the county sheriff, designate an entity to assist county jail inmates with submitting applications for, or enrolling in, a health insurance affordability program consistent with federal requirements. Requires the board of supervisors, in consultation with chief probation officer, to designate an entity to assist juvenile inmates with the same.

Permits the board of supervisors to designate the county sheriff or the chief probation officer as the entity, but only if each agrees.

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370, 1370.01, 1372, and 400+ other sections.]

P.C. 4019
(Amended)
(Ch. 599) (SB 317)
(Effective 1/1/2022)

Amends paragraph (8) of subdivision (a) to add state hospitals and mental health treatment facilities to those places (county jail treatment facilities) where a defendant earns conduct credits of four days for every two days spent in custody, when the defendant is confined in or committed to such a place while undergoing competency proceedings.

[This bill also repeals and adds a new version of P.C. 1370.01, to provide revised procedures for misdemeanor defendants found incompetent. See P.C. 1370.01, above for more information. Despite the P.C. 4019 amendment being made in a bill pertaining to misdemeanor defendants who are found incompetent, the credit increase is not limited to misdemeanants and would apply to felons as well.]

P.C. 4530.5
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Repeals this section, which had provided that an escape from Deuel Vocational Institution is punishable under P.C. 4530, the crime of escape from state prison.

This bill also amends P.C. 2042.1 to close Deuel Vocational Institution by providing that P.C. 2035–2042 (pertaining to Deuel) will become inoperative on October 1, 2021 and be repealed on July 1, 2022.

P.C. 4900
P.C. 4902
P.C. 4903
P.C. 4904
(Amended)
(Ch. 490) (SB 446)
(Effective 1/1/2022)

Changes the procedures for wrongful conviction compensation claims by shifting the burden to the Attorney General in specified cases to prove by clear and convincing evidence that the claimant committed the acts constituting the offense and therefore is not entitled to compensation. Retains $140 per day as the rate of compensation by the California Victim Compensation Board (CalVCB).

(P.C. 4902 continues to provide that if a claimant has been found factually innocent, CalVCB must calculate the claim and recommend payment to the Legislature, with no hearing being held. P.C. 851.865 and 1485.55 continue to provide that a declaration of factual innocence is sufficient for the payment of compensation without a hearing, i.e., a finding of factual innocence is binding on CalVCB and the Attorney General.)

The Types of Cases for Which the Attorney General Has the Burden to Prove a Claimant Is Not Entitled to Compensation (P.C. 4900(b))
Provides that if a state or federal court has granted a writ of habeas corpus, or if a state court has granted a motion to vacate pursuant to P.C. 1473.6 (newly discovered evidence of fraud, false testimony, or misconduct by a government official), or 1473.7(a)(2) (newly discovered evidence of actual innocence), and the charges were subsequently dismissed or the person was acquitted of the charges on retrial, the CalVCB must recommend to the Legislature that an appropriation be made to the claimant without a hearing being held, unless the Attorney General establishes that the claimant is not entitled to compensation.

Procedures When the Attorney General Objects to the Claim (P.C. 4902(d) and 4903(b))
Provides that CalVCB must calculate the claim for compensation ($140 per day) and recommend payment unless the Attorney General objects in writing within 45 days of the claim being filed. Authorizes the Attorney General to request one 45-day extension of time, upon a showing of good cause. If the AG objects, CalVCB is required to hold a hearing.

The Hearing (P.C. 4902(d), P.C. 4903(b) and (d))
At the hearing, the AG has the burden of proving by clear and convincing evidence that the claimant committed the

continued

acts constituting the offense, and, the claimant is permitted to introduce evidence in support of the claim.

Provides that a conviction reversed and dismissed is no longer valid, and prohibits the Attorney General from relying on the following circumstances in order to prove that the claimant is not entitled to compensation:

1. That the defendant was originally convicted;
2. that the state still maintains the claimant is guilty; and
3. that the state defended the conviction against the claimant through court litigation.

Also prohibits the AG from relying "solely" on the trial record to establish that the claimant is not entitled to compensation.

No Res Judicata or Collateral Estoppel (P.C. 4903(f))
Provides that a presumption does not exist in any other proceeding if the compensation claim is denied, and that no res judicata or collateral estoppel finding shall be made in any other proceeding if the compensation claim is denied.

[This bill also amends P.C. 1485.5 and 1485.55. See above.]

P.C. 5075
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Increases the number of commissioners for the Board of Parole Hearings from 17 to 21.

P.C. 5075.6
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Adds that Board of Parole Hearing commissioners and deputy commissioners "may" have professional or lived experience or educational background that may enhance the expertise of the parole board, including, but not limited to, the areas of social work, substance abuse treatment, foster care, rehabilitation, community reentry, or the effects of trauma and poverty.

P.C. 5076.1
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

and

(Amended)
(Ch. 719) (AB 1540)
(Effective 1/1/2022)

AB 145
Provides that in a tie vote by a panel of the Board of Parole Hearings (BPH) (continuing to be defined as two or more persons), the matter must be referred for an en banc review by the Board. (Previously, this section required referral to a randomly selected committee comprised of a majority of the commissioners.) Limits the review to the full record that was before the panel that resulted in the tie vote. Prohibits the commissioners from considering any new evidence or comment and prohibits a commissioner who was involved in the tie vote from being involved in the en banc review.

Changes who may hear a recommendation for the recall of a sentence pursuant to P.C. 1170(d). Instead of being heard by a panel made up of a majority of BPH commissioners, the panel must be made up of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner.

AB 1540
AB 1540 further amends P.C. 5076.1 to update the P.C. 1170(d) cross-reference to new 1170.03. Among other things, AB 1540 moves the 1170(d)(1) recall and re-sentencing provisions to new P.C. 1170.03, and expands them.

P.C. 6031
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Permits any authorized officer, employee, or agent of the Board of State and Community Corrections to enter and inspect any area of a local detention facility, without notice. Continues to require that the Board of State and Community Corrections inspect each local detention facility at least every other year.

P.C. 6047
P.C. 6047.1
P.C. 6047.2
P.C. 6047.3
P.C. 6047.4
(New)
(Ch. 745) (AB 653)
(Effective 1/1/2022)

Creates Article 6 in Chapter 5 of Title 7 of Part 3 of the Penal Code entitled "Medication-Assisted Treatment Grant Program."

Establishes the Medication-Assisted Treatment (MAT) Grant Program to be administered by the Board of State and Community Corrections, if funding is provided in the annual Budget Act or in another statute. Requires the Board to award grants on a competitive basis to counties to help county jail inmates and offenders supervised by county probation departments with substance abuse. Permits funds

continued

to be used for things such as substance abuse counselors in county jails; doses of medication related to substance abuse for inmates to take home upon release from county jail; mobile crisis teams of behavioral health professionals to respond with law enforcement to mental health or other crisis calls; and salaries and related costs for providing medication-assisted treatment to offenders on probation, postrelease community supervision, and mandatory supervision.

Requires counties that receive funding to collect and maintain data.

Defines "medication-assisted treatment" as the use of any United States Food and Drug Administration-approved medically assisted therapy to treat substance abuse, including opioid and alcohol abuse.

P.C. 6258.1
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Revises the criteria for a state prison inmate to be transferred to a community correctional reentry facility. The criteria no longer excludes an inmate who is currently serving a sentence for a violent felony (P.C. 667.5(c)). Instead, an inmate who has a current or prior conviction for an offense that requires registration as a sex offender (P.C. 290) is excluded. Instead of requiring that the inmate have less than one year to serve, an inmate may be transferred if he or she has fewer than two years left to serve. Instead of excluding an inmate who has a prior escape conviction, an inmate will be excluded if he or she has a history of escape within the past 10 years.

P.C. 9001
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Expands the California Sex Offender Management Board from 17 to 19 members by adding one member who has expertise in the treatment or supervision of juvenile sex offenders and one member who is a licensed mental health professional with experience treating juvenile sex offenders.

P.C. 9506
(New)
(Ch. 298) (SB 334)
(Effective 1/1/2022)

Requires private detention facilities responsible for the custody and control of a prisoner or a civil detainee to

1. Comply with all state and local building, health, and safety statutes and regulations;

continued

2. select and train personnel in accordance with the requirements adopted by the Board of State and Community Corrections; and
3. maintain insurance coverage for general liability, medical professional liability, civil rights violations, automobile liability, umbrella liability, and workers' compensation.

P.C. 11105.08
(Amended)
(Ch. 288) (AB 1283)
(Effective 1/1/2022)

Adds tribes to those groups (tribal organizations) that may request from the Department of Justice state and federal criminal history information for the purpose of licensing or approving a tribally approved home for the placement of an Indian child into foster or adoptive care.

Clarifies that the individual's "full criminal record" may be obtained.

P.C. 11105.9
(Amended)
(Ch. 511) (AB 110)
(Effective 10/5/2021)

Requires the Department of Corrections and Rehabilitation (CDCR), on the first of every month, and upon request of the Employment Development Department (EDD), to provide to EDD the name, known aliases, birth date, social security number, booking date, and expected release date if known, of current inmates, for the purpose set forth in new Unempl. Ins. C. 321.5 (i.e., for the purpose of preventing payments on fraudulent claims for unemployment benefits.)

This bill also creates new Unempl. Ins. C. 321.5. See the Unemployment Insurance Code section of this digest for more information.

[According to the legislative history of this bill, incarcerated persons perpetrated unemployment insurance fraud in the hundreds of millions of dollars because EDD did not have a system to regularly cross-match unemployment insurance claims with information from state correctional facilities. No data sharing agreement was in place between CDCR and EDD until December 2020.]

P.C. 11106
(Amended)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

and

(Ch. 250) (SB 715)
(Effective 1/1/2022)

AB 173
Requires that the Department of Justice (DOJ) maintain all of the information it collects about firearms and firearm transactions, and make it available to researchers with the California Firearm Violence Research Center at the University of California at Davis, for academic and policy research purposes. Permits DOJ to provide this information to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation, for the study of the prevention of violence.

SB 715
Adds information reported to the Department of Justice pursuant to P.C. 28050 (private party firearms transactions through a firearms dealer) to the list of information the Attorney General is required to "keep and properly file."

P.C. 11108.2
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

and

(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds firearms surrendered pursuant to P.C. 28050 (private party firearms transaction through a firearms dealer) and firearms relinquished pursuant to Family C. 6389 (because the person is subject to a domestic violence protective order) to the categories of firearms (e.g., firearms that are reported stolen, lost, found, recovered, held for safekeeping) that a law enforcement agency is required to enter into the Department of Justice Automated Firearms System.

P.C. 11108.3
(Amended)
(Ch. 683) (AB 1191)
(Effective 1/1/2022)

Requires the Department of Justice (DOJ), on an ongoing basis, to analyze firearm information collected pursuant to this section for patterns and trends relating to recovered firearms that have been illegally possessed, used in a crime, or suspected to have been used in a crime, including the leading sources and origins of the firearms.

Requires DOJ, by July 1, 2023, and every year thereafter, to prepare and submit a report to the Legislature summarizing the above analysis. Requires that the report include the total number of firearms recovered in the state; the number of firearms recovered, broken down by county and by city; the number of firearms recovered broken down by the firearms dealer where the most recent sale or transfer of the firearm occurred; the number of firearms broken

continued

down by manufacturer; the total number of unserialized firearms recovered; and the number of unserialized firearms recovered broken down by county and by city.

Requires that the report be made available to the public.

[This section continues to provide that a law enforcement agency may report to DOJ all available information necessary to identify and trace the history of recovered firearms that were illegally possessed, used in a crime, or suspected to have been used in a crime. P.C. 11108.2 continues to require a law enforcement agency to enter into DOJ's Automated Firearms System, each firearm that has been reported stolen, lost, found, recovered, or held for safekeeping, within seven calendar days.]

P.C. 11166.1
(Amended)
(Ch. 585) (AB 670)
(Effective 1/1/2022)

Adds that when an agency receives a report pursuant to P.C. 11166 alleging abuse or neglect of the child of a minor parent or a non-minor dependent parent, the agency must, within 36 hours, provide notice of the report to the attorney who represents the minor parent or non-minor dependent in dependency court.

Provides that "minor parent" and "non-minor dependent parent" have the same meaning as in existing W&I 16002.5: "minor parent" means a dependent child who is also a parent and "non-minor dependent parent" means a non-minor dependent of the court who is also a parent.

P.C. 13151
(Amended)
(Ch. 202) (AB 898)
(Effective 1/1/2022)

Requires a court that transfers probation pursuant to existing P.C. 1203.9 to report the transfer to the Department of Justice, once the case has been accepted by the receiving court, and to identify to DOJ the receiving superior court and the new case number, if any.

[This bill also amends P.C. 1203.9 (see above) to require the receiving court to send a "receipt of records" to the transferring court, including the new case number, if any; and to require the transferring court to report to DOJ that probation was transferred, once the receiving court accepts the transfer. Requires that a probation transfer report identify the receiving court and the new case number, if any.]

continued

[It is not clear why the amendments specify only probation and not mandatory supervision, since P.C. 1203.9 applies to both forms of supervision and both forms of supervision may be transferred from one county to another.]

[The purpose of these amendments is so that DOJ can notify both the transferring county (the county of conviction) and the receiving county (which, without notification, DOJ would be unaware of) when it grants automatic conviction relief pursuant to P.C. 1203.425, so that the records of both counties are accurate. The bill also amends P.C. 1203.425 (see above).]

P.C. 13202
(Amended)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Adds the California Firearm Violence Research Center at the University of California at Davis as an entity that is authorized to receive criminal offender record information for its research. Continues to prohibit any reports or publications derived from criminal offender record information from identifying specific offenders.

P.C. 13203
(Amended)
(Ch. 158) (AB 1480)
(Effective 1/1/2022)

Adds non-sworn employees of a criminal justice agency and applicants for a non-sworn position, to those persons (peace officer employees and applicants for a peace officer position) for whom a criminal justice agency may release arrest and detention information, and/or diversion program information, to a governmental agency employer, even if the employee or applicant was not convicted.

[This bill also amends Labor C. 432.7 to permit a criminal justice agency to obtain specified arrest or detention information about non-sworn employees, even if the arrest or detention did not result in a conviction, if the duties of the non-sworn employee relate to the collection or analysis of evidence or property; to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or to the collection, storage, dissemination, or usage of criminal offender record information. See the Labor Code section of this digest for more information.]

P.C. 13503
P.C. 13506
(Amended)
P.C. 13509.5
P.C. 13509.6
(New)
P.C. 13510
P.C. 13510.1
(Amended)
(Ch. 409) (SB 2)
(Effective 1/1/2022)

P.C. 13510.8
(New)
(Ch. 409) (SB 2)
and
(Ch. 429) (SB 586)
(Effective 1/1/2022)

P.C. 13510.85
P.C. 13510.9
(New)
P.C. 13512
(Amended)
(Ch. 409) (SB 2)
(Effective 1/1/2022)

The Kenneth Ross Jr. Police Decertification Act of 2021 (SB 2).

Overview
Grants the Commission on Peace Officer Standards and Training (POST) the authority to investigate and determine the fitness of any peace officer, and to audit any law enforcement agency that employs peace officers, without cause and at any time. Establishes a Peace Officer Standards Accountability Division within POST, to review law enforcement agency investigations into serious misconduct by peace officers. Requires the Governor to establish the Peace Officer Standards Accountability Advisory Board.

Requires law enforcement agencies to employ as peace officers only those persons who have a current and valid certification, and to report to POST any complaint or allegation of misconduct against a peace officer employed by that agency that could result in the suspension or revocation of certification. Sets forth detailed standards and procedures for the revocation or suspension of peace officer certification.

POST Powers (P.C. 13503)
Adds these new POST powers:

1. To investigate and determine the fitness of any person to serve as a peace officer; and
2. to audit any law enforcement agency that employs peace officers, without cause and at any time.

Peace Officer Standards Accountability Division (New P.C. 13509.5)
Creates within POST the Peace Officer Standards Accountability Division (Division) to review investigations conducted by law enforcement agencies and to conduct additional investigations, as necessary, into serious misconduct by peace officers that may provide grounds for suspension or revocation of a peace officer's certification, to present findings and recommendations to POST, and to bring proceedings to suspend or revoke the certification of a peace officer.

Requires POST to establish procedures for accepting complaints from members of the public about peace officers or law enforcement agencies, that may be investigated by

continued

the Division, or referred to a peace officer's employing agency, or referred to the Department of Justice (DOJ).

Peace Officer Standards Accountability Advisory Board (New P.C. 13509.6)
Requires the Governor, by January 1, 2023, to establish a nine-member Peace Officer Standards Accountability Advisory Board (Board) to make recommendations to POST on the decertification of peace officers. Requires Board members to complete a 40-hour decertification training course, to be developed by POST.

Certification Program (P.C. 13510.1)
Continues to require POST to establish a certification program for peace officers and specifies those described in P.C. 830.1, 830.2 (but not those in subdivision (d)), 830.3, 830.32, 830.33, and any other peace officer employed by an agency that participates in the POST program. Adds that the certificate or proof of peace officer eligibility is the property of POST.

Requires POST to assign each person who applies for or receives a certification, a unique identifier that will be used to track certification status from application for certification through that person's career as a peace officer.

Authorizes POST to suspend, revoke, or cancel a certification.

Defines "certification" as a valid and unexpired basic certificate or proof of peace officer eligibility issued by POST.

Requires an agency that employs peace officers to employ only those with current, valid certification, except that an agency may provisionally employ a peace officer for up to 24 months pending certification by POST, as long as that officer has not previously been certified or denied certification.

Requires deputy sheriffs to obtain valid certification upon being reassigned from custodial duties to general law enforcement duties.

Requires POST to issue a basic certificate to any peace officer who, on January 1, 2022, is eligible for a basic certificate but has not applied for certification. Requires, by January 1, 2023,

continued

a peace officer who does not possess a basic certificate and who is not yet or will not be eligible for a basic certificate, to apply to POST for proof of peace officer eligibility.

Grounds For Certification Suspension or Revocation (New P.C. 13510.8) (SB 2 and SB 586)
Sets forth the circumstances pursuant to which peace officer certification may be suspended or revoked, and provides procedures.

The circumstances pursuant to which certification may be suspended or revoked:

1. The officer has become ineligible to hold office as a peace officer pursuant to Gov't C. 1029 (e.g., the officer is convicted of a felony or other specified crime).

2. The officer is terminated for cause or engaged in serious misconduct. Requires POST, by January 1, 2023, to adopt a definition of "serious misconduct" and requires the definition to include all of the following:

    a. Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting, investigation or misconduct by, a peace officer or custodial officer, including false statements, intentionally filing false reports, tampering with or destroying evidence, perjury, and tampering with body-worn camera data;
    b. abuse of power, including intimidating witnesses, knowingly obtaining a false confession, or knowingly making a false arrest;
    c. physical abuse, including the excessive or unreasonable use of force;
    d. sexual assault;
    e. demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status;
    f. acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public;
    g. participation in a law enforcement gang, defined as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol

continued

such as matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including harassing or discriminating against individuals, violating agency policy, persistently practicing unlawful detention or using excessive force, falsifying police reports, fabricating or destroying evidence, theft, unauthorized use of alcohol or drugs on duty, and retaliating against officers who threaten or interfere with the activities of the group;

h. failure to cooperate with an investigation into potential police misconduct; and
i. failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary.

Requires, by January 1, 2023, that each law enforcement agency shall be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of the officer's employment status.

Requires the Division to promptly review any grounds for decertification received from a law enforcement agency. Requires an investigation to be completed within three years of receiving the completed report of the disciplinary or internal affairs investigation from the employing agency.

Requires records of an investigation by POST to be retained for 30 years from when the investigation is concluded.

Authorizes POST to initiate proceedings to revoke or suspend a peace officer certification for conduct that occurred *before* January 1, 2022 for either of the following:

1. Dishonesty, sexual assault, or, deadly force that resulted in death or serious bodily injury; or
2. when the employing agency makes a final determination, after January 1, 2022, regarding its investigation of the misconduct.

Decertification Notice and Proceedings (New P.C. 13510.85) Requires that an officer be notified in writing when a determination has been made by the Division that the officer's certification should be revoked or suspended, and that the officer be informed of his or her rights. Permits an

continued

officer to request, within 30 days, that the Board review the determination.

Requires the Board to review the findings at a public hearing. Requires the Board to recommend revocation if the factual basis for revocation is established by clear and convincing evidence. Provides that if the Board determines that a sanction other than revocation is warranted, it may recommend that a peace officer's certification be suspended for a period of time.

Requires POST to review all the Board's recommendations. Provides that POST's decision to adopt a recommendation to revoke certification requires a two-thirds vote of the commissioners present and must be based on whether the record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

If action is to be taken against an officer's certification, requires POST to send the case to the Division, which must initiate proceedings for a formal hearing before an administrative law judge. Provides that the administrative law judge's decision is subject to judicial review.

Provides that the hearings of the Board, POST, and the administrative law judge, and records introduced during those proceedings, shall be public.

Requires POST to publish the names of any peace officer whose certification is suspended or revoked and the basis for it, and to notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training.

Law Enforcement Agencies Must Report Officer Employment, Termination, Separation, and Misconduct to POST (New P.C. 13510.9)
Requires, beginning January 1, 2023, that law enforcement agencies report the following to POST:

1. The employment, appointment, termination, or separation from employment of a peace officer;
2. any complaint, charge, or allegation of conduct against a peace officer that could result in suspension or revocation of certification;

continued

3. any finding or recommendation by a civilian oversight entity or police chief that a peace officer has engaged in conduct that could result in suspension or revocation of certification;
4. the final disposition of any investigation that determines a peace officer engaged in conduct that could result in suspension or revocation of certification;
5. any civil judgment or court finding against a peace officer, or settlement of a civil claim against a peace officer or agency, based on conduct that could result in suspension or revocation of certification.

Requires, by July 1, 2023, that law enforcement agencies report to POST the above specified conduct that occurred between January 1, 2020 and January 1, 2023.

POST Must Provide Notice to Law Enforcement Agencies and the District Attorney (New P.C. 13510.9)
Requires POST to inform a law enforcement agency about the initiation of an investigation of a peace officer, the findings of the investigation, the final determination as to whether action should be taken against the officer's certification, and the results of any adjudication after a hearing.

Requires that if the certification of a peace officer is revoked or temporarily suspended, POST must notify the district attorney of the county in which the peace officer was employed.

[This bill also amends Civil C. 52.1, Gov't C. 1029, and P.C. 832.7. See the Civil Code and Government Code sections of this digest for more information, and P.C. 832.7, above.]

P.C. 13511.1
(New)
(Ch. 405) (AB 89)
(Effective 1/1/2022)

Tasks law enforcement stakeholders, the California State University, the Commission on Peace Officer Standards and Training (POST), and community organizations, with serving as advisors to the Chancellor of California Community Colleges in order to develop a modern policing degree program. Requires the group, by June 1, 2023, to submit a report with recommendations to the Legislature.

Requires the recommendations in the report to focus on courses pertinent to law enforcement, such as psychology, communications, history, ethnic studies, and law; to include

continued

allowances for prior law enforcement experience, military experience, and other appropriate work experience to satisfy a portion of the employment eligibility requirements; and to include both a modern policing degree program or bachelor's degree as minimum education requirements for employment as a peace officer.

[Uncodified Section One of this bill provides that it shall be known as the Peace Officers Education and Age Conditions for Employment Act or the PEACE Act. Uncodified Section Two of the bill contains the Legislature's declarations that there is an interest in minimizing peace officer use of deadly force, that brain development continues into early adulthood, that young adults with a still developing brain may struggle during events that require quick decision making and judgment, and that a study has shown that better educated officers perform better in the academy, receive higher evaluations, have fewer disciplinary problems, are assaulted less often, and miss fewer days of work than their counterparts.]

[This bill also creates new Gov't C. 1031.4 to require that most peace officers be at least 21 years old at the time of their appointment. Provides that this minimum age does not apply to any person who, as of December 31, 2021, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California. See the Government Code section of this digest for more information.]

P.C. 13519.6
(Amended)
(Ch. 691) (AB 57)
(Effective 1/1/2022)

Requires the Commission on Peace Officer Standards and Training (POST), when developing guidelines and a course of instruction on hate crimes, to consult with subject-matter experts such as law enforcement agencies, civil rights groups, academic experts, and the Department of Justice.

Requires POST, subject to an appropriation of funds for this purpose, to incorporate the November 2017 hate crimes video course, or any successor video, into the basic course curriculum.

Requires POST to make the video course available to stream via the learning portal.

continued

Requires every peace officer to complete the November 2017 video course within one year of POST making it available to stream. Requires POST to develop and periodically update an interactive course of instruction and training on hate crimes for in-service peace officers and make the course available via the learning portal.

Requires peace officers to take the November 2017 video course or its successor video course, every six years.

[This bill also amends P.C. 422.87 to require a law enforcement policy on hate crimes to include instructing officers to consider whether there was an attack on, or biased reference to, a religious symbol or article, so that officers can recognize "religion-bias hate crimes." See the Penal Code section of this digest for more information.]

P.C. 13652
P.C. 13652.1
(New)
(Ch. 404) (AB 48)
(Effective 1/1/2022)

Limits law enforcement's use of kinetic energy projectiles and chemical agents, and requires a law enforcement agency to publish on its website a summary of all instances in which a kinetic energy projectile or chemical agent is used.

P.C. 13652
Defines "kinetic energy projectile" as a device designed to be launched as a projectile that may cause bodily injury and blunt force trauma, including, but not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

Defines "chemical agent" as a chemical that can rapidly produce sensory irritation or disabling physical effects, which disappear within a short time, including, but not limited to, CN tear gas, CS gas, and items commonly referred to as pepper spray, pepper balls, and oleoresin capsicum.

Authorizes the use of kinetic energy projectiles and chemical agents only by a peace officer who has received training on their proper use for crowd control by the Commission on Peace Officer Standards and Training (POST), if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and the following requirements are met:

continued

1. De-escalation techniques or other alternatives to force were attempted and failed;
2. repeated, audible announcements are made about the intent to use kinetic energy projectiles and chemical agents, and the announcements are made in multiple languages, if appropriate;
3. persons are given an objectively reasonable opportunity to disperse and leave the scene;
4. an objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and projectiles and chemical agents are targeted toward those engaging in violent acts. Prohibits projectiles from being "aimed indiscriminately into a crowd or group of persons;"
5. projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat;
6. the possible incidental impact of projectiles and chemicals on bystanders, medical personnel, journalists, and other unintended targets is minimized;
7. an objectively reasonable effort has been made to extract individuals in distress;
8. medical assistance is promptly provided, if properly trained personnel are present, when it is reasonable and safe to do so; and
9. if the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize its use.

Prohibits aiming projectiles at the head, neck, or vital organs. Prohibits the use of projectiles and chemicals solely due to a curfew violation, a verbal threat, or noncompliance with a law enforcement directive.

Provides that new P.C. 13652 does not apply to any county detention facility or to any correctional facility of the Department of Corrections and Rehabilitation.

P.C. 13652.1
Requires a law enforcement agency, within 60 days of an incident involving the use of kinetic energy projectiles or chemical agents for crowd control, to publish a summary of the incident on its Internet Web site. The summary may be posted as late as 90 days after the incident if the agency demonstrates just cause for the delay.

continued

Provides that the summary must include a description of the assembly, protest, demonstration, or incident, including the approximate crowd size and number of officers; the type of projectile or chemical agent used; the number of rounds or quantity of agent dispersed; the number of documented injuries resulting from the projectiles or chemicals; the justification for using the projectiles or chemicals; and a description of the de-escalation tactics and other measures used to avoid the need for projectiles or chemicals.

Requires the Department of Justice to post on its Internet Web site a compiled list, linking each agency's posted reports.

P.C. 13665
(New)
(Ch. 126) (AB 1475)
(Effective 1/1/2022)

Prohibits a police department or sheriff's department from sharing on social media, booking photos of a person arrested for a non-violent crime unless any of the following circumstances exist:

1. A police or sheriff's department has determined that the suspect is a fugitive or an imminent threat to individual or public safety and releasing or disseminating the booking photo will assist in locating or apprehending the suspect, or reducing or eliminating the threat;
2. a judge orders the release or dissemination of the suspect's image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest; or
3. there is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.

Provides that if a booking photo of a person arrested for a non-violent crime is shared on social media, it must be removed within 14 days of a request from the arrestee or the arrestee's representative, unless any of the three circumstances above exists.

Provides that if a booking photo of a person arrested for a crime listed in P.C. 667.5(c) (California's list of violent crimes) is shared on social media, it must be removed within 14 days of a request from the arrestee or the arrestee's representative, if the arrestee or representative can demonstrate any of the following:

continued

1. The arrestee's record has been sealed;
2. the arrestee's conviction has been dismissed, expunged, pardoned, or "eradicated pursuant to law";
3. the arrestee has been issued a certificate of rehabilitation;
4. the arrestee was found not guilty of the crime for which he or she was arrested;
5. the arrestee was ultimately not charged with the crime or the charges were dismissed.

Provides that this new section applies retroactively to any booking photo shared on social media.

Defines "non-violent crime" as a crime not identified in P.C. 667.5(c).

Provides that "social media" has the same meaning as in P.C. 632.01, except that social media does not include an Internet Web site or electronic data system developed and administered by a police or sheriff's department. P.C. 632.01(a) provides that social media means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet web site profiles or locations.

[Uncodified Section One of this bill sets forth the Legislature's findings and declarations, including that "publishing booking photos on social media when there is a low risk to public safety is detrimental to the right to a fair trial because it diminishes the presumption of innocence and potentially violates privacy rights."]

P.C. 13670
(New)
(Ch. 408) (AB 958)
(Effective 1/1/2022)

Requires every law enforcement agency to maintain a policy that prohibits participation in a law enforcement gang and to make a violation of the policy grounds for termination. Requires a law enforcement agency to disclose the termination of a peace officer for participation in a law enforcement gang to another law enforcement agency that is conducting a pre-employment background investigation of the former peace officer.

Defines "law enforcement gang" as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, such as matching tattoos, and who

continued

engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state anti-discrimination laws; engaging in or promoting conduct that violates the rights of other employees or members of the public; violating agency policy; the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified; falsifying police reports; fabricating or destroying evidence; targeting persons for enforcement based solely on protected characteristics of those persons; theft; unauthorized use of alcohol or drugs on duty; unlawful or unauthorized protection of other members from disciplinary actions; and retaliation against other officers who threaten or interfere with the activities of the group.

[In uncodified Section One of this bill, the Legislature declares that law enforcement gangs have been identified within California law enforcement agencies, and that trust between communities and law enforcement is dependent on "an institutional reconciliation of the historical traumas perpetrated by law enforcement gangs."]

P.C. 13776
P.C. 13777
P.C. 13777.2
P.C. 13778
(Amended)
P.C. 13778.1
(New)
(Ch. 191) (AB 1356)
(Effective 1/1/2022)

Makes a number of changes to the Reproductive Rights Law Enforcement Act.

P.C. 13776
Adds cross-references to new subdivisions (g) and (h) in existing P.C. 423.2.

[This bill also makes several amendments to the California Freedom of Access to Clinic and Church Entrances Act (FACE, P.C. 423–423.6), which protects abortion clinics, providers, and patients, including by creating two new misdemeanor crimes in existing P.C. 423.2 prohibiting the filming or recording of abortion providers and patients near a reproductive health services facility and prohibiting the distribution or disclosure of those images. See P.C. 423.2, above, for more information.]

P.C. 13777
Adds the following to the types of information that law enforcement must report to the Department of Justice: the

continued

total number of anti-reproductive-rights crime-related calls for assistance made to an agency, the total number of arrests for P.C. 423.2 crimes, and the total number of cases in which a district attorney has charged a P.C. 423.2 crime. Requires the Attorney General to report the information annually to the Legislature, beginning January 1, 2023.

P.C. 13777.2
Requires the advisory committee convened by the Commission on the Status of Women and Girls to make two reports, by December 31, 2025 and by December 31, 2029, to evaluate the implementation of the California Freedom of Access to Clinic and Church Entrances Act (FACE, P.C. 423–423.6) and the Reproductive Rights Law Enforcement Act (P.C. 13775–13778.1), and the effectiveness of the Attorney General's plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes.

P.C. 13778
Requires the Commission on Peace Officer Standards and Training to update every seven years an interactive training course on anti-reproductive-rights crimes and make the training available through an online portal or platform.

P.C. 13778.1 (New)
Requires every law enforcement agency in the state, by January 1, 2023, to develop, adopt, and implement written policies and standards for officer responses to anti-reproductive-rights calls.

P.C. 13821
(Amended)
(Ch. 83) (SB 157)
(Effective 7/16/2021)

Re-directs the funding for the High Technology Theft Apprehension and Prosecution Program that had gone to the California District Attorneys Association (CDAA), to the California Department of Justice instead.

[This bill also amends P.C. 13848.4 to delete cross-references to CDAA and P.C. 13821.]

P.C. 13823.15
(Amended)
(Ch. 152) (AB 689)
(Effective 1/1/2022)

and

(Amended)
(Ch. 680) (AB 673)
(Effective 1/1/2022)

AB 689
Provides that the 24-hour crisis hotlines maintained by local domestic violence centers may include other communication methods beside telephone services, such as text messaging, computer chat, or any other technology approved by the Office of Emergency Services.

Continues to require the Office of Emergency Services to provide financial and technical assistance to local domestic violence centers to implement counseling, emergency shelters, food and clothing, transportation, court and social service advocacy, legal assistance with restraining orders, etc., and now, "twenty-four-hour crisis communication systems" instead of "twenty-four-hour crisis hotlines," so that modern technology is included.

AB 673
Requires that the portion of any grant funding awarded to domestic violence shelter service providers by the state must be distributed in a single disbursement at the beginning of the grant period.

P.C. 13823.95
(Amended)
(Ch. 80) (AB 145)
(Effective 7/16/2021)

Expands the circumstances pursuant to which a local law enforcement agency may seek reimbursement to offset the cost of conducting the medical evidentiary examination of a sexual assault victim, by adding when a victim has decided not to report the assault to law enforcement at the time of the examination and when a victim has decided to report the assault at the time of examination. Previously, this section permitted reimbursement only when a victim was undecided about whether to report an assault to law enforcement.

P.C. 13848.4
(Amended)
(Ch. 83) (SB 157)
(Effective 7/16/2021)

Eliminates a cross-reference to the California District Attorneys Association (CDAA) to conform this section to the amendment made to P.C. 13821 by this bill. [P.C. 13821 was amended to re-direct the funding for the High Technology Theft Apprehension and Prosecution Program that had gone to CDAA, to the California Department of Justice instead.

Adds a subdivision prohibiting a contract from being entered into with CDAA for the purposes of financial and technical assistance pursuant to the High Technology Theft Apprehension and Prosecution Program. (Existing

continued

P.C. 13848.2 continues to provide for a High Technology Theft Apprehension and Prosecution Program to assist district attorney offices and law enforcement agencies.)

P.C. 13899
P.C. 13899.1
(Amended)
(Ch. 113) (AB 331)
(Effective 7/21/2021)

Re-enacts P.C. 13899 and 13899.1 (which both had a sunset date of July 1, 2021), with the same language, in order to continue the Regional Property Crimes Task Force operated by the California Highway Patrol and the Department of Justice. These sections will now sunset on July 1, 2026.

[This bill also re-enacts P.C. 490.4, the felony/misdemeanor crime of organized retail theft, with the same language. P.C. 490.4 will now sunset on January 1, 2026. See above for more information about P.C. 490.4.]

P.C. 14230
P.C. 14231
P.C. 14231.5
P.C. 14236
(Amended)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Officially names the firearm-related violence research center already provided for in these sections, as the California Firearm Violence Research Center at the University of California at Davis (Center).

Appropriates $10,000 from the General Fund to the Department of Justice (DOJ) to implement the Center.

Requires DOJ to make information available from the California Restraining and Protective Order System or any other data relating to prohibitions on firearm ownership, to the Center, upon proper request. Authorizes DOJ to provide the information to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation, for the study of the prevention of violence.

Provides that material identifying individuals shall only be provided for research and statistical activities and shall not be revealed or used for any other purpose. Prohibits reports or publications from identifying specific individuals.

P.C. 14240
(New)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Creates new Chapter 3 in Title 12.2 of Part 4 of the Penal Code, entitled "Research by Other Institutions."

Requires the Department of Justice (DOJ) to establish procedures to implement Civil C. 1798.24(t) (requiring researchers, such as the University of California, to protect

continued

personal information) so that DOJ can provide researchers with information related to firearm violence. Provides that at DOJ's discretion, information may be provided to any nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation, for the study of the prevention of violence.

Provides that material identifying individuals shall only be provided for research and statistical activities and shall not be revealed or used for other purposes. Prohibits research reports or publications from identifying specific individuals. Permits DOJ to bill researchers for the reasonable costs of processing the data.

P.C. 14300
P.C. 14301
P.C. 14306
P.C. 14307
P.C. 14309
P.C. 14314
(Amended)
(Ch. 83) (SB 157)
(Effective 7/16/2021)

Eliminates the California District Attorneys Association (CDAA) as a recipient of funds or grants from the Environmental Enforcement and Training Account, and continues to permit the funding of public agencies and private nonprofit organizations so they can provide environmental enforcement education and training for law enforcement, prosecutors, investigators, and environmental regulators.

Adds that the staff of qualifying community-based nonprofit organizations are authorized to receive environmental education and training, which must be provided to them at no cost.

Removes CDAA from the Environmental Circuit Prosecutor Project, which was a cooperative project of CDAA and the California Environmental Protection Agency, renames it the Environmental Circuit Prosecutor Grant Program, and provides that it will be within the California Environmental Protection Agency.

Provides that the prosecutors, investigators, and research attorney staff that are permitted to be funded by these grants may either be employees of a private nonprofit organization composed of local prosecutors other than CDAA, or employees from local, state, or federal government agencies.

Permits a district attorney to request funding from the Program to fund a prosecutor, investigator, or research attorney who would be available in that county or another

continued

county to assist with the investigation, filing, and/or prosecution of environmental cases. Continues to refer to these prosecutors as "circuit prosecutors" and continues to require that a participating district attorney provide matching funds or in-kind contributions of at least 20 percent.

P.C. 16520
(Amended)
(Ch. 682) (AB 1057)
(Effective 7/1/2022)

Expands the definition of firearms for purposes of gun violence restraining orders (GVROs) by providing that for the purposes P.C. 18100–18205 (GVROs), "firearm" includes the frame or receiver of the weapon and includes a precursor part.

Thus, pursuant to a GVRO, law enforcement is authorized to seize an intact firearm or parts of a firearm (which could be used to assemble a ghost gun).

Provides that "firearm precursor part" has the same meaning as in P.C. 16531(a): a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame.

[This bill also creates new Family C. 6216 to expand the definition of firearm for purposes of domestic violence restraining orders. See the Family Code section of this digest for more information.]

P.C. 16590
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Eliminates nunchaku (a martial arts weapon consisting of two sticks joined by a chain or cord) from the list of prohibited weapons.

[The legislative history of the bill explains the history of the ban on nunchakus and the Legislature's reasons for legalization: In the 1970s, California banned nunchakus following the rise in popularity of Kung Fu and Bruce Lee movies, and a concern about nunchakus being used by criminals. In 2018, New York's law prohibiting the possession of nunchakus was struck down on Second Amendment grounds. (The Second Amendment protects the right of the people to keep and bear "arms," which includes more than firearms.) Nunchakus are a form of self-defense in various martial arts, including karate, taekwondo, aikido, and Eskrima. And the Committee on the Revision of the Penal Code claims that "many" California cases involving

continued

nunchakus are prosecuted based only on possession and that these cases often involve a minor.]

[This bill makes conforming amendments by amending P.C. 18010; repealing P.C. 22010, 22015, and 22090; and adding new P.C. 22296.]

P.C. 16685
(New)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

For purposes of Part 6 of the Penal Code (P.C. 16000– 34370), defines a valid and unexpired hunting license as a hunting license issued by the Department of Fish and Wildlife pursuant to Fish & Game C. 3031–3040, for which the time period authorized for the taking of birds or mammals has commenced but has not expired.

P.C. 18010
(Amended)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Eliminates nunchakus from the list of weapons for which a district attorney, city attorney, or the Attorney General may bring an action to enjoin the manufacture of, the importation of, the offering for sale of, the giving, lending, or possession of, a specified weapon that constitutes a nuisance.

This amendment conforms P.C. 18010 to the amendment to P.C. 16590 that eliminates nunchakus as prohibited weapons.

[This bill makes conforming amendments by repealing P.C. 22010, 22015, and 22090; and by adding new P.C. 22296.]

P.C. 18121
(Amended)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Prohibits the charging of a fee for any filings related to a petition for a gun violence restraining order.

P.C. 18122
(New)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Requires courts, by July 1, 2023, to permit the electronic filing of petitions for gun violence restraining orders, during and after normal business hours. Requires the superior court of each county to develop local rules and instructions for electronic filing, and to post on its Internet Web site a telephone number for the public to call to obtain information about electronic filing. Requires the telephone line to be staffed during regular business hours and requires court staff to respond to all telephonic inquiries within one business day.

P.C. 18123
(New)
(Ch. 686) (SB 538)
(Effective 1/1/2022)

Permits a party or witness to appear remotely at the hearing on a petition for a gun violence restraining order. Requires the superior court of each county to develop local rules and instructions for remote appearances and to post them on its Internet Web site. Requires the superior court of each county to post on its Internet Web site a telephone number for the public to call to obtain assistance regarding remote appearances. Requires the telephone line to be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

P.C. 22010
P.C. 22015
P.C. 22090
(Repealed)
P.C. 22296
(New)
(Ch. 434) (SB 827)
(Effective 1/1/2022)

Repeals three sections and adds one new one, to conform to the amendment to P.C. 16590 by this bill which eliminated nunchakus as prohibited weapons.

Repeals P.C. 22010 to eliminate the felony crime of manufacturing, importing, offering for sale, giving, lending, or possessing any nunchaku.

Repeals P.C. 22015 to repeal the exceptions to the nunchaku crimes in 22010: The possession of a nunchaku on the premises of a school that holds a regulatory or business license and teaches the arts of self-defense; and the manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school that holds a regulatory or business license and teaches the arts of self-defense.

Repeals P.C. 22090 to eliminate the statement that a nunchaku is a nuisance and is subject to a nuisance action brought pursuant to P.C. 18010 by a district attorney, city attorney, or the Attorney General.

Creates new P.C. 22296 to provide that as used in Part 6 of the Penal Code (P.C. 16000–34370, Control of Deadly Weapons), a "billy," "blackjack," or "slungshot" does not include a nunchaku.

[This bill also makes conforming amendments to P.C. 18010.]

P.C. 25555
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds another exception to the crime in P.C. 25400 of carrying a concealed firearm: the transportation of a firearm in order to comply with Family C. 6389—the relinquishment of a firearm by a person subject to a domestic violence protective order.

P.C. 26379
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds another exception to the crime in P.C. 26350(a)(1) of openly carrying an unloaded handgun: the relinquishment of a firearm in order to comply with Family C. 6389 because the person is subject to a domestic violence protective order.

P.C. 26405
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds another exception to the crime in P.C. 26400 of carrying an unloaded firearm that is not a handgun on one's person: the relinquishment of a firearm in order to comply with Family C. 6389 because the person is subject to a domestic violence protective order.

P.C. 26537
(New)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Provides that P.C. 26500 (the misdemeanor crime of selling, leasing, or transferring a firearm without a license), does not apply to the sale, delivery, or transfer of a firearm under either of these circumstances:

1. The transaction is made by a licensed ammunition manufacturer to a dealer or wholesaler; or
2. the transaction is done between or to a licensed ammunition manufacturer, where the firearm is to be used in the course and scope of the licensed activities.

[Uncodified Section 29 of this bill provides that this new section does *not* constitute a change in the law, but is declaratory of existing law.]

P.C. 26540
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Adds another exception to the crime in P.C. 26500 of selling, leasing, or transferring a firearm without a license: The sale, delivery, or transfer of a firearm to a dealer in order to comply with the firearm relinquishment provisions of Family C. 6389, which requires a person who is subject to a domestic violence protective order to relinquish firearms and ammunition.

P.C. 27505
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Eliminates, expands, and adds exceptions to the crime of loaning or transferring a firearm to a minor.

Eliminates these two exceptions:

1. The transfer or loan of a firearm other than a handgun by a grandparent with the permission of the minor's parent or guardian; and

continued

2. the loan of a firearm other than a handgun to a minor with the express permission of the parent or guardian, for no more than 30 days, and if the loan is for a lawful purpose.

Retains this exception and expands it to all firearms and to cover "hunting education": The loan of a firearm by a parent or legal guardian to a minor for the purpose of engaging in a recreational sport (e.g., competitive shooting, hunting) or hunting education, where the duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the sport. (Previously, this exception applied to firearms other than a handgun. It now applies to all firearms.)

Expands the exception for the loan of a firearm to a minor by a person who is not the minor's parent or guardian, from handguns only, to also include semiautomatic centerfire rifles.

Adds these two exceptions:

1. The loan of a firearm other than a semiautomatic centerfire rifle or a handgun to a minor who is 16 years of age or older, by a person who is not the minor's parent or legal guardian, if all of the following apply:
   a. The loan is with the express permission of the parent or guardian;
   b. the loan is for the purpose of engaging in a recreational sport or hunting education;
   c. the duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the sport or education; and
   d. the maximum duration of the loan is 5 days, unless the parent or guardian accompanies the minor or provides written consent, in which case the maximum duration is 10 days.

2. The loan of a firearm other than a semiautomatic centerfire rifle or a handgun to a minor under 16 years of age by a person who is not the minor's parent or guardian if all of the following apply:
   a. The loan is with the express permission of the parent or guardian;
   b. the loan is for the purpose of engaging in a recreational sport or hunting education;

continued

c. the duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the sport or education;
d. the minor is accompanied at all times by a responsible adult; and
e. the maximum duration of the loan is 5 days, unless the parent or guardian accompanies the minor or provides written consent, in which case the maximum duration is 10 days.

P.C. 27575
(New)
(Ch. 684) (SB 264)
(Effective 1/1/2022)

Prohibits the sale of a firearm, firearm precursor part, or ammunition on the property of, or in buildings on, the Orange County Fair and Event Center, or in the County of Orange, or in the City of Costa Mesa.

Provides that this prohibition does not apply to a gun buyback event held by a law enforcement agency; the sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties; the sale of a firearm, precursor part, or ammunition that occurs pursuant to a contract entered into before January 1, 2022; or to the purchase of ammunition by a law enforcement agency.

The purpose of the bill is to prohibit gun shows at the specified locations.

[Earlier versions of the bill would have prohibited gun shows on all state- or county-owned property, in buildings that sit on state or county property, and on property occupied or operated by the state or a county, including fairgrounds. Uncodified Section One of this bill claims that gun shows "bring grave danger to a community."]

P.C. 27945
(Repealed & Added)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Repeals the list of exceptions that applied to P.C. 27545 (which requires that the sale, loan, or transfer of a firearm be through a licensed firearms dealer when neither party holds a dealer's license) and instead provides that P.C. 27545 does not apply to the loan of a firearm to a minor if it is done in compliance with the exemptions set forth in P.C. 27505 (e.g., firearm transfers from a parent to a minor, or from a non-parent to a minor, where certain conditions are met.)

P.C. 27963
(New)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Provides that P.C. 27545 (which requires that the sale, loan, or transfer of a firearm be through a licensed firearms dealer when neither party holds a dealer's license) does not apply to the sale, loan, or transfer of a firearm between or to licensed ammunition manufacturers where the firearm is to be used in the course and scope of licensed activities.

[Uncodified Section 29 of this bill provides that this new section does *not* constitute a change in the law, but is declaratory of existing law.]

P.C. 28050
P.C. 28055
P.C. 28100
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

P.C. 28050
Changes the procedures for situations where a firearms dealer is helping with the sale, loan, or transfer of a firearm between parties who are not licensed firearms dealers, and after the seller or transferor delivers the firearm to the dealer, it is discovered that the dealer cannot legally deliver the firearm to the purchaser/transferee *and* cannot legally return it to the seller/transferor.

Until July 1, 2024, requires the dealer to deliver the firearm to the sheriff of the county or the chief of police, who shall then dispose of the firearm.

Beginning July 1, 2024, the dealer must retain possession of the firearm for up to 45 days if the seller so requests, so that arrangements can be made by the seller to designate a person to take possession of the firearm. If the designated person completes an application to purchase, the dealer can process the transaction. Provides that if no person is designated or if the firearm cannot be delivered to the designated person, the dealer must deliver the firearm to the sheriff of the county or the chief of police, who shall then dispose of the firearm.

Requires a dealer who retains possession of a firearm at the request of a seller/transferor who is arranging for a designated person, to notify the Department of Justice (DOJ) within 72 hours. Also requires a dealer to notify DOJ when a firearm is delivered to a law enforcement agency.

P.C. 28055
Authorizes a dealer to charge the seller/transferor a fee of up to $10 per firearm for temporary storage while arrangements are being made for a designated person to take possession of the firearm.

continued

P.C. 28100
Adds the delivery of a firearm by a dealer to a law enforcement agency as described above to the list of transactions for which a dealer is *not* required to keep a register or record of electronic or telephonic transfer.

[Uncodified Section 29 of this bill provides that the amendment to P.C. 28100 does *not* constitute a change in the law, but is declaratory of existing law.]

P.C. 28210
P.C. 28215
P.C. 28220
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

P.C. 28210 and 28215
Requires a salesperson, when selling or transferring a firearm to person under age 21 pursuant to P.C. 27510(b), to visually inspect the hunting license to confirm it is valid and not expired, and to record the document number, GO ID, and valid dates. (P.C. 27510(b) permits a person under age 21 but at least 18 years of age to purchase, receive, or possess a firearm that is not a handgun or semiautomatic centerfire rifle, if he or she has a valid and unexpired hunting license issued by the Department of Fish & Wildlife.)

Provides that if the dealer or salesperson, upon a visual inspection, cannot verify that a hunting license is valid and not expired, the firearm cannot be delivered.

P.C. 28220
Beginning July 1, 2025, for the sale or transfer of a firearm to a person under age 21 pursuant to P.C. 27510(b), requires the Department of Justice (DOJ) to verify the validity of the purchaser's hunting license with the Department of Fish & Wildlife. If DOJ cannot ascertain the validity of a hunting license, DOJ must immediately notify the firearms dealer to cancel the firearms sale, and notify the purchaser by mail.

[New P.C. 16685 defines a "valid and unexpired hunting license." See above.]

P.C. 29610
P.C. 29615
P.C. 29700
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

P.C. 29610
Expands the current prohibition on a minor possessing a handgun to also prohibit possession of a semiautomatic centerfire rifle.

Beginning July 1, 2023, prohibits a minor from possessing any firearm.

continued

(Exceptions continue to be provided in P.C. 29615.)

Adds language in new subdivision (d): "The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of this code shall not be punished under more than one provision."

P.C. 29615
Continues to provide several exceptions to the crime in P.C. 29610 of a minor possessing a firearm, such as a minor who has parental permission to engage in a lawful recreational sport.

Adds this exception: The minor possesses a firearm other than a handgun or semiautomatic centerfire rifle, with the express permission of a parent or legal guardian, and both of the following conditions are met:

1. The minor is actively engaged in, or in direct transit to or from, a lawful, recreational sport or hunting education; and
2. the minor is at least 16 years of age or is accompanied by a responsible adult at all times while in possession of the firearm.

P.C. 29700
Continues to provide that a violation of P.C. 29160 where the minor possessed a handgun is a felony punishable by 16 months, two years, or three years in jail under P.C. 1170(h). If the possession is of a firearm that is not a handgun, the crime is a misdemeanor. However, if the minor has been found guilty previously of a specified crime, the possession of any type of firearm is a felony punishable pursuant to P.C. 1170(h).

P.C. 29750
(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

Adds that it is *not* the intent of the Legislature, in adding and amending various firearms code sections in this bill related to minors, to expand or narrow the right of a minor to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

P.C. 29820
(Amended)
(Ch. 537) (SB 73)
(Effective 1/1/2022)

Makes non-substantive amendments to this felony crime of a person owning, possessing, or controlling a firearm when under age 30 and after being adjudged a ward of the juvenile court for a specified crime.

[This bill repeals P.C. 1203.073, which had provided for presumptive probation ineligibility for a number of drug crimes. P.C. 29820 cross-referenced P.C. 1203.073(b) in order to include those crimes as ones that would trigger the firearm prohibition before age 30. Because P.C. 1203.073 is repealed in its entirety as of January 1, 2022, its crimes needed to be specifically added to P.C. 29820. In amended P.C. 29820, subparagraphs (B), (C), (D), (E), and (F) in paragraph (1) of subdivision (a) spell out the drug crimes that used to be in P.C. 1203.073(b).]

P.C. 30000
P.C. 30352
P.C. 30452
(Amended)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Requires that the information in the Prohibited Armed Persons File (P.C. 3000), the Ammunition Purchase Records File (P.C. 30352), and the Firearm Precursor Part Purchase Records File (P.C. 30452) be available to researchers at the California Firearm Violence Research Center at the University of California at Davis. Provides that the Department of Justice has discretion to provide the data to any other non-profit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation, for the study of the prevention of violence.

Provides that material identifying individuals shall only be provided for research and statistical activities and shall not be revealed or used for other purposes. Prohibits research reports or publications from identifying specific individuals. Permits DOJ to bill researchers for the reasonable costs of processing the data.

P.C. 30625
(Amended)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

Adds the Department of Cannabis Control (renamed from the "Bureau of Cannabis Control" by this bill) to the long list of law enforcement agencies that may legally purchase, import, or possess an assault weapon or a .50 BMG rifle and not be in violation of P.C. 30600 or 30610 (prohibition on .50 BMG rifles) or P.C. 30605 (prohibition on assault weapons).

P.C. 31833
P.C. 31834
(New)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

P.C. 31833
Provides two exceptions to P.C. 31615. (P.C. 31615 contains the misdemeanor crimes of purchasing or receiving a firearm, except an antique firearm, without a valid firearm safety certificate; or, selling delivering, loaning, or transferring a non-antique firearm to a person who does not have a valid firearm safety certificate.)

The two exceptions:

1. The loan of a firearm that is not a handgun or semiautomatic centerfire rifle to a minor who complies with the conditions set forth in P.C. 27505(b)(4) (i.e., the minor is at least age 16, has parental permission, the purpose is to engage in a lawful recreational activity or hunting education, the duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the sport, and in no case can the loan be for longer than 10 days); or
2. the loan of a firearm that is not a handgun or semiautomatic centerfire rifle to a minor who complies with the conditions set forth in P.C. 27505(b)(5) (i.e., the minor is under age 16, has parental permission, the purpose is to engage in a lawful recreational activity or hunting education, the minor is accompanied at all times by a responsible adult, and the duration of the loan does not exceed 10 days.)

P.C. 31834
Provides this exception to P.C. 31615: P.C. 31615 does not apply to the sale, delivery, or transfer of a firearm between or to importers and manufacturers of ammunition who are licensed to engage in those businesses, and the firearm is to be used in the course and scope of the licensed activities.

[Uncodified Section 29 of this bill provides that new P.C. 31834 does *not* constitute a change in the law, but is declaratory of existing law.]

P.C. 32000
(Amended)
(Ch. 70) (AB 141)
(Effective 7/12/2021)

and

(Amended)
(Ch. 250) (SB 715)
(Effective 1/1/2022)

AB 141 adds the Department of Cannabis Control (renamed from the "Bureau of Cannabis Control" by this bill) to the long list of law enforcement agencies that are authorized to purchase unsafe handguns for use as service weapons by their sworn members if those members have completed a firearms training course, and complete a live-fire qualification every six months.

SB 715 makes a technical correction to a cross-reference.

Unemployment Insurance Code

Unempl. Ins. C. 321.5
(New)
(Ch. 511) (AB 110)
(Effective 10/5/2021)

Requires the Employment Development Department (EDD) to verify that a claimant for unemployment benefits is not a state prison inmate, using the information that amended P.C. 11105.9 requires the Department of Corrections and Rehabilitation (CDCR) to supply to EDD each month. The purpose of this amendment is to prevent payment on fraudulent claims for unemployment benefits. Requires EDD, at the earliest possible date but not later than September 1, 2023, to complete necessary system programming or automation upgrades to allow electronic monitoring of CDCR inmate data.

This bill also amends P.C. 11105.9 to require CDCR, on the first of every month, and upon request of EDD, to provide to EDD the name, known aliases, birth date, social security number, and booking date and expected release date if known, of current inmates. See the Penal Code section of this digest for more information.

[According to the legislative history of this bill, incarcerated persons perpetrated unemployment insurance fraud in the hundreds of millions of dollars because EDD did not have a system to regularly cross-match unemployment insurance claims with information from state correctional facilities. No data sharing agreement was in place between CDCR and EDD until December 2020.]

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Vehicle Code

V.C. 11500
(Amended)
V.C. 11545
(New)
(Ch. 601) (SB 366)
(Effective 1/1/2022)

Amends V.C. 11500 to add specific fine penalties to the crime of acting as an automobile dismantler without an established place of business and without a license, and provides that the place where illegal auto dismantling occurs is a public nuisance.

Adds new V.C. 11545 to require specified agencies to collaborate on enforcement and compliance activities related to auto dismantling.

V.C. 11500
Adds that a violation of V.C. 11500 is a misdemeanor, however, the crime is punishable by infraction penalties—a fine only, and not jail. By labeling the crime a misdemeanor instead of what it really is, an infraction, a defendant will be entitled to a jury trial and a free attorney. P.C. 19.6 has long provided that a defendant charged with an infraction is not entitled to a jury trial or a free attorney.

Provides that a first violation is punishable by a fine of at least $250, a second violation by a fine of at least $500, and a third or subsequent violation by a fine of at least $1,000.

Provides that a building or place used for automobile dismantling in violation of V.C. 11500 is a public nuisance subject to being enjoined, abated, and prevented, and for which damages may be recovered by any public body or officer. Defines "public body" as a state agency, county, city, district, or other political subdivision of the state.

V.C. 11545
Requires the Department of Motor Vehicles to collaborate with the California Department of Tax and Fee Administration, the California Environmental Protection Agency, the Department of Toxic Substances Control, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, and the State Air Resources Board to review and coordinate enforcement and compliance activity related to unlicensed and unregulated automobile dismantling, including tax evasion, environmental impacts, and public health impacts.

Requires a report to be submitted to the Legislature by January 1, 2024 that includes, among other things, the

continued

number of unlicensed auto dismantlers investigated; the number of investigations that resulted in an administrative enforcement action, a civil enforcement action, criminal prosecution, or compliance assistance activity; the number of investigations related to the theft of catalytic convertors; and the number of locations determined to be a public nuisance.

Provides that new V.C. 11545 will remain in effect only until January 1, 2025.

V.C. 13352
(Amended)
(Ch. 611) (AB 3)
(Effective 1/1/2022)

Provides that beginning July 1, 2025, upon a finding of a violation of V.C. 23109(c) (exhibition of speed) that occurred as part of a side show, the court may suspend the defendant's driver's license for 90 days to six months.

[This bill also amends V.C. 23109. See below.]

V.C. 21300
(New)
(Ch. 175) (AB 974)
(Effective 1/1/2022)

Creates new Article 8 in Chapter 1 of Division 11 of the Vehicle Code entitled "Horseback Riding" in order to add new infraction crimes relating to horseback riding on paved highways.

Requires a person under age 18 riding an equestrian animal on a paved highway to wear a properly fitted and fastened helmet that meets specified standards.

Requires a person riding an equestrian animal on a paved highway during the hours of darkness to either:

1. Wear reflective gear or have reflective gear on the animal that is visible from 500 feet on the rear and the sides; or
2. have a white light attached to the person or the animal that is visible from 300 feet in front and on the sides.

Provides that a violation is an infraction punishable by a fine of up to $25. Makes a parent or guardian of a minor who violates this new section jointly and severally liable with the minor for the amount of the fine.

Requires that a charge under this new section be dismissed when the violator alleges in court and under oath that the charge is the first charge against the person under this section, unless it is established in court that the charge is not the first charge against the person.

continued

Provides that the above helmet and lighting requirements do not apply when the rider is participating in a parade or festival, or while crossing a paved highway from an unpaved highway.

Provides that in a civil action, a violation of this new section does not establish negligence on the part of the rider as a matter of law or negligence per se for comparative fault purposes, but that negligence may be proven without regard to the violation.

V.C. 23109
(Amended)
(Ch. 611) (AB 3)
(Effective 1/1/2022)

Provides that beginning July 1, 2025, upon a finding of a violation of V.C. 23109(c) (exhibition of speed) that occurred as part of a side show, the court may suspend the defendant's driver's license for 90 days to six months. Permits the court to restrict the license to driving to and from work, and, if driving is necessary to the defendant's work duties, the license may be restricted to driving in the scope of employment.

Requires the court to consider whether a medical, personal, or family hardship exists that requires the defendant to have a driver's license for the limited purpose of addressing the hardship.

Defines "side show" as an event in which two or more persons block or impede traffic on a highway, for the purpose of performing vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

[This bill also amends V.C. 13352. See above.]

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
(Repealed)
(Ch. 79) (AB 143)
(Effective 7/16/2021)

Repeals Chapter 1.5 (V.C. 40280–40288) of Division 17 of the Vehicle Code, a pilot program for the online adjudication of Vehicle Code infractions and online determination of a defendant's ability to pay.

See Gov't C. 68645–68645.7 in this digest for a new statewide program for adjudicating all infractions online and determining ability-to-pay online.

V.C. 40303.5
(Amended)
(Ch. 57) (AB 591)
(Effective 1/1/2022)

Adds a number of crimes relating to vessel registration, identification numbers, and equipment to the list of crimes (vehicle registration infraction, driver's license infraction, bicycle equipment, vehicle equipment) for which an arresting officer must issue a fix-it ticket, unless the arresting officer finds that any of the disqualifying conditions in V.C. 40610(b) exist (e.g., fraud, persistent neglect, immediate safety hazard, the violator does not agree to promptly correct the violation).

The added crimes:

1. Expired vessel registration (V.C. 9850);
2. display of vessel identification numbers (V.C. 9853.2);
3. possession of a vessel operating card (Harbors & Navigation C. 678.11);
4. display of vessel identification numbers (Cal. Code Regs. title 13, section 190.00(a) and (c));
5. vessel registration stickers (13 Cal. Code Regs. 190.01);
6. personal flotation devices on vessels (14 Cal. Code Regs. 6565.8);
7. serviceable fire extinguishers on vessels (14 Cal. Code Regs. 6569);
8. markings on fire extinguishers on vessels (14 Cal. Code Regs. 6572).

V.C. 40508.5
(Repealed)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Repeals this section that had permitted a $15 assessment to be imposed on a person violating a written promise to appear or a lawfully granted continuance of a promise to appear in court.

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by specifying them in subdivision (b) of existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

V.C. 40510.5
(Amended)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Eliminates the $35 fee that was required to be paid for the processing of an installment account when a defendant agrees to pay and forfeit bail in installments for an infraction violation of the Vehicle Code.

continued

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by specifying them in subdivision (b) of existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

V.C. 42240
(New)
(Ch. 257) (AB 177)
(Effective 1/1/2022)

Creates new Article 3 in Chapter 2 of Division 18 of the Vehicle Code, entitled "Uncollectible Costs."

Provides that beginning January 1, 2022, the unpaid balance of any court-imposed costs pursuant to V.C. 40508.5 and former subdivision (g) in V.C. 40510.5 shall be unenforceable and uncollectible, and any portion of a judgment imposing those costs shall be vacated. [See above for more information on these two sections.]

[This bill eliminates a number of administrative criminal fees, makes past debt for these fees uncollectible by specifying them in subdivision (b) of existing P.C. 1465.9 or in new V.C. 42240, and allocates backfill funding to counties for the loss of revenue from these repealed fees. Uncodified Section 46 of the bill appropriates $25 million for backfill revenue to counties in the 2021-2022 fiscal year and $50 million for the 2022-2023 fiscal year.]

Welfare & Institutions Code

(See the Juvenile Offenders section for W&I changes that pertain to juvenile criminal law.)

W&I 213.5
(Amended)
(Ch. 685) (SB 320)
(Effective 1/1/2022)

Provides that when a juvenile court issues a protective order pursuant to this section, Family C. 6389 applies, and the court must make a determination as to whether the restrained person is in possession or control of a firearm or ammunition as provided in new Family C. 6322.5.

[Existing Family C. 6389 prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect, and sets forth relinquishment procedures.]

[New Family C. 6322.5 codifies Rule of Court 5.495 to "better effectuate" the requirement in existing law that a person who is subject to a domestic violence protective order relinquish firearms and ammunition.]

[The types of protective orders specified in W&I 213.5 may protect a child, a child's parent or legal guardian, a child's social worker or probation officer, or a court appointed special advocate, and include stay away orders, and orders prohibiting threats, stalking, sexual assault, harassment, battering, etc.]

Provides that if the restrained person is a minor under the jurisdiction of the juvenile court pursuant to W&I 601 or W&I 602, then Family C. 6389(m) does not apply. Family C. 6389(m) requires that a restrained person who violates an order pursuant to Family C. 6389 is punishable under P.C. 29825, which contains the crimes of purchasing, receiving, owning, or possessing a firearm, knowing that one is prohibited from doing so by a restraining order.

W&I 4147
(New)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Requires the State Department of State Hospitals (DSH) and the California Health and Human Services Agency to convene an Incompetent to Stand Trial Solutions Workgroup to identify alternatives to placement at DSH. Requires the workgroup to submit recommendations by November 30, 2021, outlining short-term solutions that can be accomplished by April 1, 2022, medium-term solutions that can be accomplished by January 10, 2023, and long-term

continued

solutions that can be accomplished by January 10, 2024 and January 10, 2025.

Permits the workgroup to consider recommendations that accomplish any of the following, but specifies that the workgroup is not limited to these:

1. Reducing the total number of felony defendants determined to be incompetent to stand trial (IST);
2. reducing the length of stay for felony IST defendants;
3. supporting early access to treatment before transfer to a restoration competency program, in order to achieve stabilization and restoration of competency sooner;
4. supporting increased access to felony IST diversion options;
5. expanding treatment options for felony IST defendants, such as community-based restoration programs, jail-based competency treatment programs, and state hospital beds;
6. creating new options for treatment of felony IST defendants including community-based facilities, locked facilities, and unlocked facilities;
7. establishing partnerships to facilitate admissions and discharges to reduce recidivism and ensure that the most acute, high-risk, and at need defendants receive access to DSH beds, while defendants with lower risk or acuity are treated in appropriate community settings.

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370, 1370.01, 1372, and amends or adds 400+ other sections, including new W&I 4335.2, which permits DSH to conduct re-evaluations of defendants declared incompetent to stand trial. See below for more information about new W&I 4335.2. See the Penal Code section of this digest for more about P.C. 1370–1372.]

W&I 4335.2
(New)
(Ch. 143) (AB 133)
(Effective 7/27/2021)

Beginning July 1, 2021, authorizes the State Department of State Hospitals (DSH) to conduct re-evaluations of defendants found incompetent to stand trial who are committed to and are awaiting admission to DSH, in order to reduce the backlog of mentally incompetent defendants awaiting placement. Requires the court to provide DSH with the defendant's mental competence records pursuant to P.C. 1370(a)(3) and 1370.01(a)(4) (e.g., commitment order, maximum term of commitment, criminal history, arrest reports, court-ordered psychiatric examination or evaluation reports, the community program director's placement recommendation report) and any updated medical and behavioral health records requested by DSH. Gives the DSH clinician or contracted clinician the discretion to conduct an in-person or video telehealth evaluation. Requires county jails to establish and maintain remote access capabilities so that DSH can remotely evaluate a defendant.

What Re-Evaluations Must Include
Requires re-evaluations by DSH to include the following:

1. Evaluations, including assessment of malingering, pursuant to P.C. 1370(b)(1), 1370.01(b), or 1372(a)(1);
2. assessments to determine whether mentally incompetent defendants should be referred to the county for further evaluation for potential participation in a county diversion program or an outpatient treatment program;
3. evaluations on whether a mentally incompetent defendant is substantially unlikely to be restored to competence in the foreseeable future;
4. psychopharmacology evaluations in which a DSH clinician decides if a defendant needs psychotropic medications or an involuntary medication order; and
5. a written report from the clinician evaluating the defendant, including any conclusions about mental health status and recommendations for placement. Requires the written report to be filed with the court in the committing county.

Funding
Requires DSH to provide funding to local county jails for reimbursement of information technology support and a portion of jail staff time to facilitate telehealth interviews and evaluations of "felony IST defendants in the jail."

continued

Legislative Findings and Declarations
Provides that the purpose of this section is to establish a program for DSH to perform re-evaluations primarily through telehealth evaluations of "felony incompetent to stand trial (IST) individuals in jail" who have been waiting for admission to DSH for 60 days or more from the date of commitment.

[Since the program is limited to defendants facing felony charges, the cross-references to P.C. 1370.01 are odd, since 1370.01 sets forth the procedures when a defendant facing misdemeanor charges is found incompetent to stand trial.]

Provides that the goals of the program are:

1. To permit DHS to conduct re-evaluations;
2. to reduce the growing list of mentally incompetent defendants awaiting placement in a DSH facility;
3. to help address the impact of COVID-19 on the waitlist through identification of defendants on the waitlist who have been restored to mental competence while in jail, or who are non-restorable, or who are malingering, or who may be divertible, or who may have stabilized and are appropriate for outpatient treatment;
4. to reduce the timeframe for a competency evaluation and reduce unnecessary costly hospitalizations;
5. to offer expert forensic mental health consultation to assist in identifying mentally incompetent defendants who may be appropriate for community placement;
6. to offer expert medication consultation and technical assistance to local sheriffs to support effective use of psychotropic medications and stabilization of mentally incompetent defendants waiting placement in a DSH facility;
7. to require courts and local county jails to provide to DSH all relevant medical, behavioral, and court records of mentally incompetent defendants committed to DSH for evaluation purposes; and
8. to require local county jails to provide DSH with access to mentally incompetent defendants for remote evaluations.

[AB 133 is an omnibus health trailer bill. It also amends P.C. 1370, 1370.01, 1372, and amends or adds 400+ other sections, including new W&I 4147, which creates a group to work on alternatives to DSH placement for mentally incompetent defendants. See W&I 4147, above, for more information. See the Penal Code section of this digest for more information about P.C. 1370–1372.]

W&I 5118
(Amended)
(Ch. 389) (SB 578)
(Effective 1/1/2022)

Adds that a hearing held under the Lanterman-Petris-Short Act (W&I 5000–5556) is presumptively closed to the public if the hearing involves the disclosure of confidential information. This codifies the case of *Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409.

[The LPS Act, among other things, provides for the involuntary detention, evaluation, and treatment of people who are gravely disabled or are a danger to self or others; housing conservatorships; and assisted outpatient treatment.]

Defines "hearing" as any proceeding conducted under the LPS Act, including conservatorships, certification review hearings, and jury trials.

Continues to provide that any party to the hearing may ask that the hearing be public.

Adds that the individual who is the subject of the proceeding may also request the presence of a family member or friend without waiving the right to keep the hearing closed to the rest of the public.

Permits the court to make the hearing public at the request of a party if it finds that the public interest in an open hearing clearly outweighs the individual's interest in privacy.

Requires a judge or hearing officer, before commencing a hearing, to inform the individual who is the subject of the proceeding of his or her rights under this section.

W&I 6601
(Amended)
(Ch. 383) (SB 248)
(Effective 1/1/2022)

Creates a procedure for the evaluation of a sexually violent predator (SVP) who commits a new crime while serving an indeterminate term in a state hospital as an SVP.

Requires the Department of Corrections & Rehabilitation (CDCR), at least six months before the inmate's scheduled release from state prison on the new offense, to refer the inmate directly to the State Department of State Hospitals (DSH) for a full SVP evaluation of whether the inmate still meets the criteria for designation as an SVP. Permits CDCR to make this referral later than six months before the prison release date if the inmate was received by CDCR with fewer

continued

than nine months to serve, or if the inmate's release date is modified by judicial or administrative action.

Provides that if both evaluators agree that the inmate has a diagnosed mental disorder so that the inmate is likely to engage in acts of sexual violence without appropriate treatment and custody (i.e., the evaluators agree that the inmate is still an SVP), DSH must send a request for a court order to authorize a transfer of the inmate directly from CDCR to a state hospital to continue serving the remainder of the original indeterminate SVP commitment (i.e., the SVP commitment that was imposed after the inmate was convicted of the earlier offense), if the original SVP petition has not been dismissed. The request for the order transferring the inmate directly from CDCR to a state hospital must be sent by DSH no later than 20 calendar days before the inmate's CDCR release date. The request for the transfer order goes to the county that committed the inmate as an SVP. Provides that if the SVP petition has been dismissed, DSH must send a request for a new SVP commitment petition to be filed, to the county that originally committed the defendant as an SVP, at least 20 calendar days before the inmate's scheduled release date.

[The purpose of this amendment is to prohibit the re-litigation of an inmate's SVP status, thereby reducing the incentive that SVPs currently have to commit crimes while in state hospitals so that at the end of their new CDCR state prison terms, they can get new court hearings and a new trial on the SVP issue.]

W&I 8106
(New)
(Ch. 253) (AB 173)
(Effective 9/23/2021)

Requires that data reported to the Department of Justice pursuant to W&I 8100–8108 (which pertain to the possession and purchase of firearms and deadly weapons by mentally ill persons) be available to researchers at the California Firearm Violence Research Center at the University of California at Davis. Provides that the Department of Justice has discretion to provide the data to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation, for the study of the prevention of violence.

continued

Provides that material identifying individuals shall only be provided for research and statistical activities and shall not be revealed or used for other purposes. Prohibits research reports or publications from identifying specific individuals. Permits DOJ to bill researchers for the reasonable costs of processing the data.

W&I 15633.5
(Amended)
(Ch. 621) (AB 636)
(Effective 1/1/2022)

and

(Amended)
(Ch. 554) (SB 823)
(Effective 1/1/2022)

AB 636
Amends the Elder Abuse and Dependent Adult Civil Protection Act to authorize confidential information from mandated reporters of abuse to be shared with local code enforcement agencies and federal law enforcement agencies, for specified purposes.

Provides that if an incident of elder or dependent adult financial abuse may be within the jurisdiction of a federal law enforcement agency, information may be given to the federal law enforcement agency for the sole purpose of investigating a financial crime committed against the elder or dependent adult.

[According to the legislative history of the bill, this is intended to address scams or fraud occurring across state lines.]

Authorizes information about elder and dependent adult abuse to be provided to a local code enforcement agency for the sole purpose of investigating an unlicensed care facility where the health and safety of an elder or dependent adult resident is at risk.

[According to the legislative history of this bill, Independent Living Facilities are unlicensed facilities that provide care to multiple individuals in one residence and there have been cases involving substandard care, which can constitute elder abuse. Because these facilities are not licensed, it is difficult for Adult Protective Services to ensure the wellbeing of residents.]

SB 823
Changes the name of the Department of Oversight to the Department of Financial Protection and Innovation.

Updates a reference from "bureau" to "division" to conform to the amendment to Gov't C. 12528 by this bill that

continued

renamed the Bureau of Medi-Cal Fraud within the Attorney General's Office as the Division of Medi-Cal Fraud and Elder Abuse.

W&I 15657.03
(Amended)
(Ch. 273) (AB 1243)
(Effective 1/1/2023)

Adds two types of protective orders that may be issued on behalf of an elder or dependent adult, one pertaining to isolation and the other to specific debts that were incurred as a result of financial abuse.

This section continues to also apply to protective orders that enjoin contact, physical abuse, harassment, threats, etc.

Isolation
Adds an order prohibiting a party from isolating an elder or dependent adult to the types of protective orders that may be issued pursuant to this section. An elder or dependent adult make seek an order prohibiting isolation, or the order may be sought on behalf of the elder or dependent adult. Also permits an "interested party" to seek a protective order prohibiting isolation. Defines "interested party" as a person with a personal, pre-existing relationship with the elder or dependent adult.

Requires the court to find the following circumstances by a preponderance of the evidence, in order to issue a protective order prohibiting isolation:

1. The respondent's past act or acts of isolation repeatedly prevented contact with the interested party;
2. the elder or dependent adult expressly desires contact with the interested party;
3. the respondent's isolation of the elder or dependent adult from the interested party was not in response to an actual or threatened abuse of the elder or dependent adult by the interested party or the elder or dependent adult's desire not to have contact with the interested party.

Prohibits an order enjoining isolation from being issued under this section if the elder or dependent adult resides in a long-term care facility, a residential facility, or a health facility. Provides that under these circumstances, action may be taken under other appropriate state or federal laws.

continued

Debts Incurred as a Result of Financial Abuse
Adds an order finding that specific debts were incurred as a result of the financial abuse of an elder or dependent adult, to the types of protective orders that may be issued pursuant to this section. Provides that the acts that may support this type of order, include, but are not limited to, identity theft crimes proscribed by existing P.C. 530.5.

[According to the legislative history of this bill, the purpose of this amendment is to give the elder or dependent adult an additional tool to use when facing collection activity by creditors and collectors. They can use the coerced debt findings to dispute the debts.]

Requires the Judicial Council to revise or promulgate forms by February 1, 2023.

W&I 18961.7
(Amended)
(Ch. 93) (AB 477)
(Effective 1/1/2022)

Provides that if a county uses a Child Advocacy Center (CAC) to implement a coordinated multidisciplinary response to investigate reports of child abuse and neglect, the multidisciplinary team may include the CAC, so that, for example, case information and forensic interviews of child abuse victims may be shared with the CAC.

[Existing P.C. 11166.4 permits each county to use a CAC to implement a coordinated multidisciplinary response to investigate reports of child physical abuse, sexual abuse, exploitation, or maltreatment. P.C. 11166.4 details the standards that are required of a CAC. Existing P.C. 11166.4(e) already permits the members of a multidisciplinary team associated with a CAC to share information and records with other multidisciplinary team members.]

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