California District Attorneys Association

Legislative Digest

— 2022 Edition —

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Business & Professions Code

B&P 2232
B&P 2307
(Amended)
(Ch. 453) (AB 1636)
(Effective 1/1/2023)

Makes changes to the revocation and reinstatement of medical licenses and physician's and surgeon's certificates to expand automatic license suspension, and to prohibit the reinstatement of certificates under specified circumstances. B&P 2232 uses the term "license." B&P 2307 uses the term "certificate." Existing B&P 2040 provides that as used in Chapter 5 of the Business & Professions Code (B&P 2000–2529.6), the terms "license" and "certificate" are deemed to be synonymous.

Amends B&P 2232 to expand the grounds for automatic medical license revocation from licensees who have been required to register as a sex offender, to also include licensees who have been convicted in California of an offense described in P.C. 290(c) or convicted in another state of an offense that would have been punishable as an offense described in P.C. 290(c) if it had been committed in California. The conviction by itself triggers automatic medical license revocation, apparently without regard to whether the licensee is required to actually register as a sex offender.

Eliminates provisions that had permitted a person to petition for reinstatement of a license five years after revocation and three years after successful discharge from parole or probation.

Eliminates the revocation exception for licensees who have been relieved under P.C. 290.5 of the duty to register as a sex offender or whose duty is to register has otherwise been formally terminated. Now no longer being required to register as a sex offender does not affect license revocation.

[Continues to provide that B&P 2232 does not apply to a licensee who is required to register as a sex offender pursuant to P.C. 290 solely because of a misdemeanor conviction for P.C. 314 (indecent exposure).]

Amends B&P 2307 to prohibit the Medical Board from reinstating the certificate of a physician or surgeon under the following circumstances, except in cases where the person is required to register as a sex offender pursuant to P.C. 290 solely because of a misdemeanor conviction for P.C. 314 (indecent exposure):

continued

1. The certificate was surrendered because the person committed an act of sexual abuse, sexual misconduct, or sexual relations with a patient, or sexual exploitation;

2. The certificate was revoked based on a finding by the Medical Board that the person committed an act of sexual abuse, sexual misconduct, or sexual relations with a patient, or sexual exploitation;

3. The person was convicted in California, or in another state, of an offense described in P.C. 290(c) and the victim was a patient or client, or a former patient or client if the relationship was terminated primarily for the purpose of committing the offense; or

4. The person is required to register as a sex offender pursuant to P.C. 290 regardless of whether the conviction has been appealed, and the victim of the offense was a patient or client, or a former patient or client if the relationship was terminated primarily for the purpose of committing the offense.

[The legislative history of this bill details a December 2021 story in the *Los Angeles Times* about doctors who had sexually abused their patients and ended up getting their medical licenses reinstated.]

B&P 16759
(Amended)
(Ch. 698) (AB 2766)
(Effective 1/1/2023)

Grants to city attorneys and county counsels the investigatory powers in Gov't C. 11180–11191 (e.g., pre-litigation subpoena powers), in order to investigate B&P 17200 unfair competition violations. Applies to the city attorneys of cities with a population of over 750,000 and to the county counsels of a county that has a city with a population of over 750,000.

[Existing B&P 17204 already authorizes these city attorneys and county counsels to bring B&P 17200 unfair competition actions. This bill grants them the same powers to investigate these actions as district attorneys have.]

Continues to authorize these investigatory powers for district attorneys for B&P 17200 investigations, as well as for unlawful restraint of trade investigations (B&P 16720–16728 and B&P 16750–16761), and unfair trade practices investigations (B&P 17000–17101).

continued

Adds a new subdivision (d) that applies to city attorneys and county counsels, but **not** district attorneys: If the recipient objects to a subpoena, the recipient must serve objections and meet with the issuer of the subpoena in an attempt to address the objections. If the recipient and the issuer cannot reach agreement, the recipient may then petition the superior court for an order quashing or modifying the subpoena.

[This was added to address concerns about businesses not being able to move to quash a subpoena until the prosecuting entity moves to compel production of records. New subdivision (d) authorizes a subpoena recipient to move to quash or modify the subpoena if no agreement is reached with the issuer of the subpoena, even if the issuer has not yet made a motion to compel production of records.]

B&P 17206.2
(New)
(Ch. 620) (SB 1311)
(Effective 1/1/2023)

Provides that in addition to any civil penalty in existing B&P 17206 for an unfair competition violation, if the act is perpetrated against a service member or veteran, an additional civil penalty of up to $2,500 for each violation, may be assessed. This penalty would be in addition to the penalty already provided for in B&P 17206.

[Existing B&P 17204 authorizes district attorneys, the Attorney General, and specified city attorneys and county counsels to bring unfair competition actions. Existing B&P 17206 provides that each unfair competition violation is subject to a civil penalty of up to $2,500. Existing B&P 17206.1 provides for an additional civil penalty (on top of that provided for in B&P 17206) of up to $2,500 per violation if an act of unfair competition is perpetrated against a senior (age 65 or older), or a disabled person.]

[This new section is part of the "Military and Veteran Consumer Protection Act of 2022" and includes amendments to C.C.P. 116.540 (small claims court) and to Military & Vet. C. 401, 408.1, 409, 409.3, 800, 802, and 804, which are not included in this digest.]

B&P 21610
(Amended)
(Ch. 514) (SB 1087)
(Section 1.2)
(Effective 1/1/2023)

Makes several changes in order to discourage and prevent the theft of catalytic converters.

Expands the types of written records that a core recycler must obtain and keep when accepting a catalytic converter

continued

for recycling. Continues to define a "core recycler" as a person or business that buys used catalytic converters, transmissions, and other parts removed from a vehicle. Adds these records to those that must be obtained and kept:

1. The business license number or tax identification number of a commercial enterprise that sells a catalytic converter. Defines "commercial enterprise" as an automobile dismantler; a core recycler that maintains a fixed place of business; a motor vehicle manufacturer or dealer; an automotive repair dealer; or any other licensed business that may "reasonably generate, possess, or sell used catalytic converters."

2. The year, make, and model of the vehicle from which the catalytic converted was removed.

3. "If applicable, a copy of the title of the vehicle from which the catalytic converter accepted was removed that shows the vehicle identification number matches the number permanently marked on the catalytic converter."

Prohibits a core recycler from providing payment for a catalytic converter unless the seller is a person described in new V.C. 10852.5: an automobile dismantler; a core recycler; a motor vehicle manufacturer or dealer; a licensed automotive repair dealer; a licensed business that may reasonably generate, possess, or sell used catalytic converters; or an individual possessing documentation of lawful ownership of a used catalytic converter. New V.C. 10852.5 is an infraction crime that applies to all persons and prohibits purchasing a used catalytic converter from anyone except one of the above persons or entities. [See the Vehicle Code section of this digest for more information about V.C. 10852.5.]

Provides that some of the requirements in B&P 21610 do not apply if a core recycler has a written agreement with a seller of a catalytic converter, and the agreement includes a log describing each catalytic converter received pursuant to the agreement with sufficient particularity so that catalytic converters in the core recycler's inventory can be matched to the description in the log.

[Subdivision (g) continues to require core recyclers to keep and maintain catalytic converter information for at least two

continued

years. Subdivision (h) continues to require core recyclers to make the information available for inspection by local law enforcement upon demand. Subdivisions (i), (j), and (k) continue to provide that a violation of this section, or a false statement about the information a core recycler is required to maintain, is a misdemeanor crime, but punishable only by a fine and not jail time. Continues to authorize a court to order a defendant to stop engaging in the business of a core recycler for up to 30 days (for a second violation) or at least one year (for a third and subsequent violation).]

[*Note*: SB 1087 (Chapter 514) prevails over a slightly different version of B&P 21610 in AB 1740 (Chapter 513).]

B&P 21628
(Amended)
(Ch. 723) (SB 1317)
(Effective 1/1/2023)

Eliminates the requirement for a secondhand dealer to report the name and personal identifying information about a seller/pledger to DOJ through the California Pawn and Secondhand Dealer System (CAPSS), and instead requires that this information be recorded and maintained by a secondhand dealer for three years from the date the sale was reported to CAPSS. Therefore, the CAPSS report will have information about the property sold to the secondhand dealer, but nothing about the identity of the seller. Provides that the identity of the seller/pledger will be listed as "on file."

Continues to require that a secondhand dealer provide information to law enforcement when the dealer is notified that an item has been reported as lost, stolen, or embezzled. Adds that the identification information for the seller/pledger must be supplied "immediately upon request or no later than the next business day."

[This bill was sponsored by the California Pawnbrokers Association, which said it was concerned about data breaches and the potential for pawn customers to have their identity stolen, and that therefore the risk of personal information being exposed needed to be reduced. This bill had bipartisan opposition, barely passed, and a number of legislators did not vote. The bill got only 41 votes in the Assembly and 22 votes in the Senate.]

B&P 22589
B&P 22589.1
B&P 22589.2
B&P 22589.3
B&P 22589.4
(New)
(Ch. 700) (AB 2879)
(Effective 1/1/2023)

Creates new Chapter 22.2.9 in Division 8 of the Business & Profession Code entitled "Cyberbullying Protection Act."

Requires a social media platform to disclose all cyberbullying reporting procedures in its terms of service, and to establish a mechanism that allows any person to report cyberbullying, even if the person does not have a profile on that internet-based service.

Excludes social media platforms that generated less than $100 million in gross revenue during the preceding calendar year or whose primary function is to allow users to play video games.

Defines "cyberbullying" in terms of students bullying other students: An electronic act (e.g., telephone, wireless telephone, computer, pager) committed by a pupil or group of pupils directed toward one or more pupils that has or can be reasonably predicted to have the effect of any of the following:

1. Placing a reasonable pupil in fear of harm to body or property;
2. Causing a reasonable pupil to experience a substantially detrimental effect on the pupil's physical or mental health;
3. Causing a reasonable pupil to experience substantial interference with academic performance; or
4. Causing a reasonable pupil to experience a substantial interference with the pupil's ability to participate in, or benefit from, the services, activities, or privileges provided by a school.

The enforcement statute (B&P 22589.3) is not operative until September 1, 2023, so as to give social media platforms time to come into compliance. It provides for a civil penalty of up to $7,500 for each intentional violation of this chapter, and that the action may be brought only by the Attorney General.

Provides that each day a social media platform is in violation constitutes a separate violation.

B&P 22675
B&P 22676
B&P 22677
B&P 22678
B&P 22679
B&P 22680
B&P 22681
(New)
(Ch. 269) (AB 587)
(Effective 1/1/2023)

Creates a new Chapter 22.8 in Division 8 of the Business & Professions Code entitled "Content Moderation Requirements for Internet Terms of Service," which applies to social media companies that generated at least $100 million in gross revenue during the preceding calendar year.

Requires social media companies to post terms of service for each social media platform owned or operated by the company, including contact information allowing users to ask questions about terms of service; a description of the process for flagging content, groups, or other users who may be violating the terms of service; and a list of potential actions the company may take against content or a user, including removal, demonetization, deprioritization, and banning.

Requires social media companies to submit a terms of service report to the Attorney General twice per year and requires the Attorney General to make the reports available to the public on its website. Among other things, these reports must include a detailed description of content moderation practices and statistics about things such as the number of times content was flagged, the number of items removed, demonetized, or deprioritized, and the number of user appeals brought and won.

Provides that a violation of this new chapter is subject to civil penalty of up to $15,000 per violation per day, or may be enjoined in court.

Provides that only the Attorney General or a city attorney may bring an action. Does not mention district attorneys.

B&P 22942
(Amended)
B&P 22942.5
(New)
(Ch. 401) (AB 847)
(Effective 1/1/2023)

B&P 22942 is amended to provide for a four-year phase-in period for foil balloons to be able to pass a high-voltage test so that they do not cause power outages when they contact overhead electric power lines. B&P 22942 continues to require that foil balloons have specified markings and warnings. New B&P 22942.5 authorizes district attorneys, among others, to bring civil actions for B&P 22942 violations.

Requires the Institute of Electrical and Electronics Engineers (IEEE) to approve a standard test for foil balloons, and once that test is approved, or by January 1, 2027, whichever is later, sellers and manufacturers of foil balloons will be subject to these phase-in periods:

continued

1. At least 25 percent of foil balloons must be in compliance within one year;
2. At least 55 percent of foil balloons must be in compliance within two years;
3. At least 80 percent of foil balloons must be in compliance within three years; and
4. One hundred percent of balloons must be in compliance within four years.

After the end of the four-year phase-in period, prohibits a person from selling, offering for sale, or manufacturing for sale in this state, a foil balloon unless it passes the high-voltage test.

New B&P 22942.5 provides that a violator of B&P 22942 is subject to a civil penalty and/or an injunction. Provides for a $50 civil penalty for each foil balloon that is not in compliance, up to a maximum civil penalty of $2,500 per day. Provides that a district attorney, city attorney, city prosecutor, or the Attorney General may bring a civil action and that any civil penalties collected shall be paid to the office that brought the action.

B&P 22945
(New)
(Ch. 432) (AB 1628)
(Effective 1/1/2023)

Creates new Chapter 31.5 in Division 8 of the Business & Professions Code entitled "Drug Safety Policies on Social Media Platforms" that applies to social media platforms that generated at least $100 million in gross revenue during the preceding calendar year.

Requires social media platforms that operate in California to create and publicly post on their Internet websites a policy statement about drug safety, including the platform's policy on the use of social media to illegally distribute a controlled substance; a general description of the platform's practices to prevent users from posting or sharing electronic content about illegal distribution; a link to mental health and drug education resources; a link to the platform's reporting mechanism for illegal or harmful content or behavior; and a general description of the platform's policies and procedures for responding to law enforcement inquiries, including warrants, subpoenas, and court orders compelling the production of, or access to, electronic communication information.

Provides that this new chapter will sunset on January 1, 2028.

B&P 22949.60
B&P 22949.61
B&P 22949.62
B&P 22949.63
B&P 22949.64
B&P 22949.65
B&P 22949.66
B&P 22949.67
B&P 22949.68
B&P 22949.69
B&P 22949.70
B&P 22949.71
(New)
(Ch. 146) (SB 1327)
(Effective 1/1/2023)

Creates a new Chapter 38 in Division 8 of the Business & Professions Code entitled "Persons Engaged in the Manufacture, Distribution, Importation, Transportation, Sale, Lease, or Transfer of Firearms and Precursor Parts." **Authorizes enforcement only through private civil actions.**

Prohibits the manufacture, distribution, transportation, importation, sale, giving, or lending of an assault weapon, a .50 BMG rifle, or an un-serialized firearm. Also prohibits the purchase, sale, or transfer of a firearm precursor part that is not a federally regulated firearm precursor part.

Provides that the enforcement of this new chapter is exclusively through private civil actions, and cannot be enforced by the state, a political subdivision, a district attorney, a county attorney, or a city attorney. Provides for statutory damages of $10,000 for each firearm or firearm part. Prohibits an action against an **individual** who purchases, obtains, or attempts to purchase or obtain an assault weapon, a .50 BMG rifle, or a firearm precursor part.

[This bill also creates new C.C.P. 1021.11 to provide that any person, entity, attorney, or law firm seeking declaratory or injunctive relief to prevent the state, a governmental entity, or a public official from enforcing a law that regulates or restricts firearms, or that represents any litigant seeking that relief, is liable to pay the attorney's fees and costs of the prevailing party.]

[The legislative history of the bill provides that its enforcement scheme is based on the state of Texas' heartbeat law for unborn children, which prohibits an abortion if a fetal heartbeat is detected, and authorizes a private person to bring an action for a violation of the law. On September 26, 2022, a challenge to SB 1327 was filed in federal court in the Southern District of California: *Miller et. al v. Bonta et. al,* 22-CV-01446.]

[Uncodified Section Three of this bill provides the following:

1. A statute that regulates or prohibits firearms shall not be construed to repeal any other statute that regulates or prohibits firearms, in whole or in part, unless the later-enacted statute explicitly states that it is repealing the other statute.

continued

2. A statute shall not be construed to restrict a political subdivision from regulating or prohibiting firearms in a manner that is at least as stringent as the laws of the state, unless the statute explicitly states that political subdivisions are so prohibited.

3. Every statute that regulates or prohibits firearms is severable in its application to persons and circumstances, and if found unconstitutional, all applications of the statute that do not violate the U.S. and California Constitutions shall be severed from the unconstitutional applications and shall remain enforceable.]

B&P 22949.80
(New)
(Ch. 77) (AB 2571)
(Effective 6/30/2022)

and

(Further Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Creates a new Chapter 39 in Division 8 of the Business & Professions Code entitled "Marketing Firearms to Minors."

Prohibits a "firearm industry member" from advertising or marketing firearms and firearm-related products in a manner that is designed, intended, or reasonably appears, to be attractive to minors.

Defines "firearm industry member" as a manufacturer, distributor, importer, marketer, or seller of firearm-related products.

Defines "firearm-related product" as a firearm, ammunition, firearm precursor part, firearm component, or firearm accessory that is sold or distributed in California, or intended to be sold or distributed in California, or made in California, or it is reasonably foreseeable the item would be sold or possessed in California, or, marketing or advertising for the item is directed at residents of California.

Provides that a violation is subject to a civil penalty of up to $25,000 for each violation, and may be assessed and recovered in a civil action brought by a district attorney, the Attorney General, a county counsel, or a city attorney. Also authorizes "a person harmed by a violation of this section" to bring a civil action to recover actual damages.

Provides that this new section does not apply to communications that offer or promote firearm safety programs, firearm instructional courses, hunting safety, or sport shooting events.

continued

[Uncodified Section One contains the Legislature's findings and declarations, including that the proliferation of firearms to and among minors poses a threat to the health, safety, and security of California residents and visitors.]

[On August 5, 2022, a lawsuit was filed in federal court (Eastern District) alleging that this new section violates the First Amendment: *So Cal Top Guns, Inc., et al. v. Bonta*.]

B&P 26000
B&P 26001
(Amended)
(Ch. 389) (AB 1885)
(Effective 1/1/2023)

and

B&P 26001
(Amended)
(Ch. 33) (AB 2155)
(Effective 1/1/2023)

AB 1885 adds cannabis products intended for use on, or consumption by, animals, to the types of cannabis products that come within the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), so that pet and animal cannabis products can be manufactured, tested, and sold explicitly for pet and animal use.

Excludes from the definition of "animal" a food animal (e.g., cattle, swine, sheep, poultry, fish) and livestock, so that cannabis products are not permitted to be used on, or consumed by, animals that humans eat.

[AB 1885 also amends B&P 4884 to permit veterinarians to recommend the use of cannabis on an animal for therapeutic and health purposes. Previously a veterinarian was permitted only to **discuss** cannabis use for an animal.]

AB 2155 amends the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to add a definition of "cannabis beverage"—a form of edible cannabis product that is intended to be consumed in its final state as a beverage.

According to the legislative history of AB 2155, cannabis beverages are the fastest growing segment of consumer cannabis products and were not previously defined in the Business & Professions Code. A codified definition will allow the Department of Cannabis Control to develop regulations for testing and labeling that are specific to a liquid, rather than using testing standards that are designed for solid edible products.

B&P 26038
(Amended)
(Ch. 56) (AB 195)
(Effective 6/30/2022)

Adds a civil penalty in new subdivision (a)(3) for unlicensed commercial cannabis activity by a person who knowingly rents, leases, or makes available for use, with or without compensation, a commercial property, building, room, or space for the purpose of the unlicensed commercial cultivation, manufacture, storage, sale, or distribution of cannabis. Provides for a civil penalty of up to $10,000 per day and provides that only the Attorney General, a "city or county counsel," or a city prosecutor may bring such an action.

Requires that the person have actual knowledge that the cannabis activity was for commercial purposes, that a license was required, and that the activity was unlicensed. Provides that the presence of a lawful amount of cannabis, cannabis products, or cannabis plants shall not be evidence of actual knowledge.

Note: In 2021, AB 1138, effective 1/1/2022, amended this section and removed district attorneys from the list of entities mentioned in the context of reimbursement for the costs of bringing a civil action, but did not explicitly prohibit district attorneys from bringing actions pursuant to subdivision (a)(1) against a person engaging in commercial cannabis activity without a license. AB 1138 explicitly prohibited district attorneys from bringing an action pursuant to subdivision (a)(2) against an aider and abettor of unlicensed commercial activity by providing in subdivision (e)(4) that such actions may be brought only by the Attorney General, a "city or county counsel," or a city prosecutor. There is no such limitation for subdivision (a)(1) civil actions.

The legislative history of AB 1138 stated 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." District attorneys cannot bring subdivision (a)(2) or (a)(3) actions, but may be able to bring subdivision (a)(1) actions. However, district attorneys may not be able to recover the costs of such actions. Subdivision (e) provides that if an action is brought by the Attorney General, a county counsel, a city attorney, or a city prosecutor, any penalty recovered shall first be used to reimburse that entity for the costs of bringing the action, with the remainder being deposited into the General Fund.

B&P 26203
(New)
(Ch. 56) (AB 195)
(Effective 6/30/2022)

Establishes a task force on commercial cannabis activity in order to promote communication and cooperation between state and local entities engaged in the regulation of commercial cannabis activity. Requires that the task force be composed of representatives from DOJ, the Department of Cannabis Control, the Department of Tax and Fee Administration, the Department of Fish and Wildlife, the State Water Resources Control Board, the Department of the California Highway Patrol, and the Labor and Workforce Development Agency.

Permits a local jurisdiction that regulates commercial cannabis activity and that opts to participate in the task force, to send representatives from one or more of the following: a district attorney or city attorney's office; a sheriff's department or city police department; and a person designated by a local jurisdiction to serve as the commercial cannabis contact for the Department of Cannabis Control pursuant to existing B&P 26055(f).

Provides that this new section will sunset on January 1, 2025.

B&P 26300
B&P 26301
B&P 26302
B&P 26303
B&P 26304
B&P 26305
B&P 26306
B&P 26307
B&P 26308
(New)
(Ch. 396) (SB 1326)
(Effective 1/1/2023)

Creates new Chapter 25 in Division 10 of the Business & Professions Code, entitled "Interstate Cannabis Agreements."

Authorizes the governor of California to enter into agreements with other states that have legalized medicinal or recreational cannabis, in order to engage in interstate commercial cannabis activity. Requires the governor to submit any agreement for comment by the public and by the Joint Legislative Budget Committee.

Provides that no agreement will take effect until federal law is amended to allow the interstate transfer of cannabis; or a federal law is enacted that prohibits spending federal funds to prevent the interstate transfer of cannabis; or the U.S. DOJ issues an opinion or memo allowing the interstate transfer of cannabis between authorized commercial cannabis businesses; or the California Attorney General issues a written opinion that these kinds of agreements will not result in significant legal risk to the State of California under the federal Controlled Substances Act, based on a review of applicable law, including federal judicial decisions and administrative actions.

continued

[According to the legislative history of this bill, the California cannabis industry is experiencing overproduction and a steep drop in prices, and would like to expand its market by being able to ship California cannabis to other states.]

B&P 26320
B&P 26321
B&P 26322
B&P 26323
B&P 26324
B&P 26325
(New)
(Ch. 395) (SB 1186)
(Effective 1/1/**2024**)

Creates new Chapter 26 in Division 10 of the Business & Professions Code, entitled "Medicinal Cannabis Patients' Right of Access Act" in order to ensure that medicinal cannabis can be delivered to medicinal cannabis patients.

Prohibits a local jurisdiction from adopting or enforcing any regulation that prohibits, or effectively prohibits, the retail sale by delivery of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses. Specifically prohibits the regulation of any of the following that has the effect of prohibiting the retail sale by delivery of medicinal cannabis:

1. The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction;
2. The operating hours of medicinal cannabis businesses;
3. The number or frequency of sales by delivery of medicinal cannabis;
4. The types or quantities of medicinal cannabis authorized to be sold by delivery; and
5. The establishment of physical business premises.

Provides that nothing in this new chapter prohibits the adoption or enforcement of reasonable regulations on the retail sale by delivery of medicinal cannabis, including zoning requirements that are not inconsistent with this new chapter, public health and safety requirements, licensing requirements, and the imposition and collection of applicable state and local taxes. Provides that nothing in this new chapter should be construed to affect the ability of a local jurisdiction to adopt or enforce regulations on **commercial** cannabis operations other than the retail sale by delivery of medicinal cannabis.

Permits a civil action to enforce this new chapter to be brought by the Attorney General, a medicinal cannabis patient or primary caregiver, a medicinal cannabis business, or "any other party otherwise authorized by law."

continued

[The purpose of this bill is to ensure that medicinal cannabis patients can receive deliveries of medicinal cannabis at their residences. The legislative history of this bill asserts that 62% of California local governments ban all forms of cannabis retail activity, and that 40% of Californians live in jurisdictions where the sale and delivery of cannabis products are not allowed.]

Civil Code

Civil C. 51.14
(New)
(Ch. 555) (AB 1287)
(Effective 1/1/2023)

Prohibits a person or business from charging a different price for any two goods that are substantially similar if those goods are priced differently based on the gender of the consumers for whom the goods are marketed and intended, unless the price difference is based on a gender-neutral reason such as the amount of time it took to manufacture the goods, the cost incurred or difficulty in manufacturing the goods, or the labor or materials used in manufacturing the goods.

Defines "goods" as any consumer products used or bought primarily for personal, family, or household use. (*Note*: "goods" do not include services.)

Authorizes the Attorney General to bring an action for an injunction and a civil penalty. Provides for a $10,000 civil penalty for a first violation, and a civil penalty of $1,000 for each subsequent violation. Prohibits the total civil penalty from being more than $100,000, unless the defendant continues to violate this new section with respect to the same goods for which a $100,000 civil penalty has been imposed, or violates with respect to different goods.

[The legislative history of the bill cites studies showing that women tend to have to pay more than men for personal care products (e.g., deodorant, razors, shave gel, shampoo), clothing, and senior/home health care products.]

Civil C. 52.6
(Amended)
(Ch. 106) (AB 1661)
(Effective 1/1/2023)

Adds hair, nail, electrolysis and skin care businesses to those businesses (e.g., airports, bus stations, truck stops, hospital emergency rooms, roadside rest areas, job recruitment centers, hotels and inns, massage businesses) that are required to post a notice regarding resources for victims of, and witnesses to, human trafficking and slavery.

This section continues to provide that a district attorney, the Attorney General, and specified county counsels and city attorneys may bring a civil action for a violation of this section that is not corrected within 30 days of a notice of noncompliance. Also continues to provide that a first violation is subject to a $500 penalty and each subsequent offense is subject to a $1,000 penalty.

Civil C. 52.65
(New)
(Ch. 760) (AB 1788)
(Effective 1/1/2023)

Creates a cause of action for civil penalties against a hotel where sex trafficking activity occurs, under either of these two scenarios:

1. A supervisory employee of the hotel either knew of the nature of the activity, or acted in reckless disregard of the activity, and failed to inform law enforcement, the National Trafficking Hotline, or another appropriate victim service organization within 24 hours; or

2. An employee of the hotel acted within the scope of employment and knowingly benefited, financially or by receiving anything of value, by participating "in a venture that the employee knew or acted in reckless disregard of the activity constituting sex trafficking within the hotel."

Defines "sex trafficking" as human trafficking for the purpose of engaging in a commercial sex act as set forth in P.C. 236.1(c).

[*Note*: P.C. 236.1(c) applies only when the victim is a minor. It appears that this new section would **not** apply to a P.C. 236.1(b) sex trafficking crime (depriving or violating the personal liberty of another person with the intent to effect or maintain a violation of P.C. 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518.)]

Provides that a city attorney or county attorney (which would include district attorneys and county counsels), may bring a civil action against a hotel for injunctive relief and to recover civil penalties of $1,000 for the first violation in a calendar year, $3,000 for the second violation within the same calendar year, and $5,000 for the third and subsequent violation within the same calendar year. Permits a court to increase the civil penalty to a maximum of $10,000 for a fourth or subsequent violation.

Provides that hotel employees are not liable for civil penalties under this new section.

Permits an action to be brought within five years of the date of the violation, or, if the trafficking victim was a minor, within five years of the date the minor victim reaches age 18.

Civil C. 1708.88
(New)
(Ch. 504) (SB 53)
(Effective 1/1/2023)

Creates a private right of action against a person age 18 or older who knowingly sends by electronic means an image depicting obscene material that the person knows or reasonably should know is not solicited. (This type of conduct is also known as "cyber flashing.")

Provides that a prevailing plaintiff who suffers harm as a result of receiving an image may recover economic and noneconomic damages proximately caused by the receipt of the image, including damages for emotional distress; any other available relief, including injunctive relief; and reasonable attorney's fees and costs.

A prevailing plaintiff who receives an image that had been expressly forbidden by the plaintiff may also recover punitive damages, and in lieu of economic and noneconomic damages, may choose to recover statutory damages of between $1,500 and $30,000.

Provides that "image" includes, but is not limited to, a moving visual image. Provides that an image is not solicited if the recipient has not consented to, or has expressly forbidden, the receipt of the image.

Defines "obscene material" as images depicting a person engaging in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or masturbation, or depicting the exposed genitals or anus of any person, that to the average person applying contemporary statewide standards, appeals to the prurient interest and lacks serious literary, artistic, political, or scientific value.

Specifies that this new section does not apply to internet service providers, mobile data providers, a service that transmits images, a health care provider transmitting an image for a legitimate medical purpose, and "an individual who has not expressly opted-out of receiving sexually explicit images on the service in which the image is transmitted, where such an option is available."

Civil C. 1749.8
Civil C. 1749.8.1
Civil C. 1749.8.2
Civil C. 1749.8.3
Civil C. 1749.8.4
Civil C. 1749.8.5
(New)
(Ch. 857) (SB 301)
(Effective 7/1/2023)

Adds new Title 1.4D in Part 4 of Division 3 of the Civil Code, entitled "Online Marketplaces."

The purpose of this bill is to combat the sale of stolen goods online by requiring high-volume third-party sellers to provide identifying information to online marketplaces and consumers, and by authorizing the Attorney General to seek civil penalties for a violation of these new laws.

Defines "high-volume third-party seller" as a third-party seller who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete transactions through an online marketplace for the sale of new or unused consumer products to buyers located in California resulting in $5,000 or more in gross revenues.

High-Volume Third-Party Sellers Must Submit Information to Online Marketplaces (Civil C. 1749.8.1)
Requires third-party sellers to supply the following information to the online marketplace, within 10 days of qualifying as a high-volume seller: a bank account number or name of the payee for payment issued by the online marketplace to the seller; if the seller is an individual, the individual's name; if the seller is not an individual, a copy of a valid government record or tax document that includes the business name and physical address of the seller; a taxpayer identification number; and a valid email address and telephone number.

Requires an online marketplace to suspend the sales activity of any third-party seller who does not submit this information.

High-Volume Third-Party Sellers With $20,000 Annual Gross Revenues Must Disclose Information to Consumers, and Online Marketplaces Must Provide a Reporting Mechanism for Suspicious Activity (Civil C. 1749.8.2)
Requires high-volume third-party sellers who gross at least $20,000 from transactions with California buyers in either of the two prior calendar years, to disclose the following information in an order confirmation message or other communication made to a consumer after a purchase is finalized: full name; physical address; contact information including a working telephone number, email address, or

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other means of direct electronic messaging; and whether or not another party is responsible for supplying the product to the consumer upon purchase.

Permits a seller to disclose a state and country, instead of a physical address, if the seller has only a residential physical address.

Requires an online marketplace to disclose to consumers on the product listing of a third-party seller, a reporting mechanism that allows for the electronic and telephonic reporting of suspicious activity to the online marketplace.

Requires an online marketplace to suspend the sales activity of a seller who is not in compliance with this section, or who makes a false representation to the online marketplace or to consumers. Permits an online marketplace to suspend the sales activity of a third-party seller who has not answered consumer inquiries within a reasonable timeframe.

Civil Penalties (Civil C. 1749.8.4)
Authorizes the Attorney General to bring a civil action for a violation of this new title, in order to recover a penalty of up to $10,000 for each violation and/or obtain an injunction or restraining order. Also provides that if the Attorney General prevails, reasonable attorney's fees, and costs, including expert witness fees and other litigation expenses, may be recovered.

[See also sections 7599.110–7599.113 (AB 1700) in the Government Code section of this digest, which require the Attorney General to establish a reporting location on its internet website for consumers to report suspected stolen goods they find on online marketplaces, and requires online marketplaces to display a link to that location on their platforms.]

Civil C. 1798.97.1
Civil C. 1798.97.2
Civil C. 1798.97.3
Civil C. 1798.97.4
Civil C. 1798.97.5
Civil C. 1798.97.6
(New)
(Ch. 989) (SB 975)
(Effective 1/1/2023)

Adds new Title 1.81.35 in Part 4 of Division 3 of the Civil Code, entitled "Coerced Debt," which creates a process for victims of domestic violence or elder or dependent adult abuse, and foster youth, to be relieved of liability for debts they were coerced into entering.

Defines "coerced debt" as a debt for personal, family, or household use in the name of a debtor who is a victim of

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domestic violence, a victim of elder or dependent adult abuse, or a foster youth, that was incurred as a result of duress, intimidation, threat of force, force, fraud, or undue influence.

The Pre-Litigation Informal Process
Requires a claimant to cease collection activities upon receiving adequate documentation and the debtor's sworn written certification that a debt being collected is coerced. Provides that if the claimant has furnished adverse information about the debtor to a credit reporting agency, the claimant must notify the agency that the account is disputed.

Requires the claimant to review the debt, and notify the debtor in writing of its determination. Provides that if a claimant does not recommence collection activities and has provided adverse information to a credit reporting agency, the claimant must notify the agency to delete that information.

Adequate documentation is defined as documentation that identifies a particular debt as coerced debt, describes the circumstances under which the coerced debt was incurred, and takes the form of any of the following:

1. A police report;

2. A Federal Trade Commission identity theft report identifying a particular debt as coerced, but not as identity theft;

3. A court order issued pursuant to Family C. 6340 relating to domestic violence, W&I 213.5 relating to a dependent or ward of the juvenile court, or W&I 15657.03 relating to elder or dependent adult abuse; or

4. A sworn written certification from a qualified third-party professional based on information received while acting in a professional capacity. Requires that the certification display the letterhead, address, and telephone number of the third-party professional.

The Court Process
If the above informal process does not work to cease collection activities, a debtor is authorized to bring an action

continued

against a claimant to establish that a debt is coerced, after providing a 30-day notice. Also permits a debtor to file a cross-complaint in an action brought by a claimant.

Provides for the following relief if a debtor establishes by a preponderance of the evidence that a debt or portion of a debt is coerced:

1. A declaratory judgment that the debtor is not obligated to pay;

2. An injunction prohibiting the claimant from holding the debtor liable and from enforcing the judgment against the debtor; and

3. An order dismissing the action brought by the claimant.

Authorizes a court to issue a judgment against the person who coerced the debt if that person has been brought within the jurisdiction of the court and joined as a party.

Prohibits a person from causing another person to incur a coerced debt, and makes that person civilly liable to the claimant for the amount of the debt, plus the claimant's attorney's fees and costs.

Provides that this new title does not apply to secured debts.

Provides that this new title applies to debts incurred on or after July 1, 2023, unless a debtor files a cross-complaint in an action filed by a claimant to collect a debt incurred before July 1, 2023.

Civil C. 1798.99.20
Civil C. 1798.99.21
Civil C. 1798.99.22
Civil C. 1798.99.23
(New)
(Ch. 881) (SB 1056)
(Effective 1/1/2023)

Creates new Title 1.81.46 in Part 4 of Division 3 of the Civil Code entitled "Online Violence Prevention Act."

Requires a social media platform with at least one million discrete monthly users to clearly and conspicuously state whether it has a mechanism for reporting violent posts. If the social media platform does have a reporting mechanism, requires the platform to include in the statement a link to the reporting mechanism.

Defines "violent post" as content on a social media platform that contains a true threat against a specific person that is not protected by the First Amendment.

Authorizes a person who is the target of a violent post to seek an order requiring the social media platform to remove the post and any related posts the court determines should be removed in the interest of justice. Requires a targeted person to report the violent post to a social media platform before seeking a removal order from a court, if the platform has a reporting mechanism. Prohibits a court from ruling on a removal order until 48 hours have passed since notice was provided by the targeted person to the platform. Permits a court to dismiss the action if the platform deletes the post within 48 hours of being notified about it. Requires a court to award reasonable attorney's fees and court costs to a prevailing plaintiff. Permits the court to award reasonable attorney's fees to a prevailing defendant if the court finds the plaintiff's action was not in good faith.

Civil C. 1798.99.28
Civil C. 1798.99.29
Civil C. 1798.99.30
Civil C. 1798.99.31
Civil C. 1798.99.32
Civil C. 1798.99.33
Civil C. 1798.99.35
Civil C. 1798.99.40
(New)
(Ch. 320) (AB 2273)
(Effective 1/1/2023)

Creates new Title 1.81.47 in Part 4 of Division 3 of the Civil Code entitled "The California Age-Appropriate Design Code Act."

Beginning July 1, 2024, requires a business that provides an online service, product, or feature that is likely to be accessed by a child (defined as a person under 18 years of age) to complete a Data Protection Impact Assessment before offering the online service, product, or feature to the public, and to comply with other specified requirements. Defines the Assessment as a systematic survey to assess and mitigate risks to children that arise from the data management practices of a business. Requires the Assessment to address topics such as whether children could be exposed to harmful content, or targeted by harmful contacts, or exposed to harmful online conduct. Requires the Assessment to be provided to the Attorney General upon written request.

Also requires these businesses to create a plan to mitigate or eliminate any risk of material detriment to children identified in the Assessment, configure default privacy settings to offer a high level of privacy, and provide an obvious signal to a child when the child is being monitored or tracked by a parent or guardian.

Prohibits these businesses from doing a number of things, such as using the personal information of children in a way that is materially detrimental to the physical health,

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mental health, or well-being of the child; profiling children by default unless there are appropriate safeguards and the profiling is necessary to provide the online service, product, or feature, or is in the best interests of children; and collecting, selling, sharing, or retaining personal information that is not necessary in order to provide the online service, product, or feature, unless the business can demonstrate a compelling reason that it is in the best interests of children who are likely to access the online service, product, or feature.

Creates a Data Protection Working Group to report to the Legislature on the best practices for implementing this new title.

Provides that a violator of this new title is subject to an injunction and to a civil penalty of up to $2,500 per affected child for each negligent violation, or up to $7,500 per affected child for each intentional violation. Provides that only the Attorney General may bring such an action. Provides that a business that is in substantial compliance with specified requirements must be given written notice by the Attorney General of an alleged violation, and 90 days to cure it, before it can be liable for a civil penalty.

Civil C. 1799.91
Civil C. 1799.92
Civil C. 1799.96
(Amended)
(Ch. 149) (SB 633)
(Effective 1/1/2023)

Expands the languages (from Spanish and English, to also include Chinese, Tagalog, Vietnamese, and Korean) that a co-signer warning must be provided in, when a person who is not proficient in English co-signs on a consumer credit contract.

Requires that the co-signer warning be provided on a separate sheet of paper and that it provide a place for the co-signer to acknowledge receipt of the warning.

Requires the Department of Financial Protection and Innovation, by January 1, 2023, to make available for download on its Internet website the various translations of the warning/notice.

[The co-signer warning/notice continues to provide that if the borrower does not pay the debt, the co-signer will have to pay it; the co-signer may have to pay up to the full amount of the debt, including fees and collection costs; and, the creditor can collect the debt from the co-signer without first trying to collect from the borrower.]

Civil C. 1834.9.3
(New)
(Ch. 551) (SB 879)
(Effective 1/1/2023)

The Protection of Dogs and Cats from Unnecessary Testing Act.

Prohibits a testing facility from conducting toxicological experiments on dogs and cats to test the external or internal effect of a pesticide or chemical substance, unless the experiment satisfies an express requirement imposed by the U.S. Environmental Protection Agency or the Food and Drug Administration. Provides that this prohibition does not apply to medical research or to testing for the purpose of developing a product intended for beneficial use in dogs or cats.

Authorizes a district attorney, city attorney, or the Attorney General to bring a civil action for injunctive relief, and if they prevail, they may recover costs, attorney fees, and a civil penalty of $5,000 per day for each dog and cat used in an experiment that violates this section.

[Existing Civil C. 1834.9 continues to prohibit manufacturers and contract testing facilities from using traditional animal test methods for which an appropriate alternative test method has been scientifically validated and recommended by the Inter-Agency Coordinating Committee for the Validation of Alternative Methods. Continues to authorize a district attorney, city attorney, or the Attorney General to bring a civil enforcement action. Existing Civil C. 1834.9.5 continues to prohibit a manufacturer from importing, selling, or offering for sale a cosmetic that was developed or manufactured using an animal test that was conducted on or after January 1, 2020. Continues to authorize a district attorney or city attorney to bring a civil enforcement action.]

Civil C. 3273.50
Civil C. 3273.51
Civil C. 3273.52
Civil C. 3273.54
Civil C. 3273.55
(New)
(Ch. 98) (AB 1594)
(Effective 7/1/2023)

Creates new Title 20 in Part 4 of Division 3 of the Civil Code entitled "Firearm Industry Responsibility Act." Authorizes the Attorney General, a city attorney, a county counsel, and any person who has suffered harm in California because of a firearm industry member's conduct, to bring a civil action to enforce this new Title. **District attorneys are not mentioned in the bill**, but should have the power to bring specified Business & Professions Code actions against a violator, based on existing Business & Professions Code authorities. (See more on this below.)

Requires a firearm industry member to comply with a standard of conduct set forth in new Civil C. 3273.51, which includes prohibitions and mandatory actions.

Mandatory Actions
Requires a firearm industry member (defined as a person, company, or entity that manufactures, distributes, imports, markets, or sells firearm-related products) to do both of the following:

1. Establish, implement, and enforce reasonable controls; and

2. Take reasonable precautions to not sell, distribute, or provide a firearm-related product to a downstream distributor or retailer of firearm-related products who then fails to establish, implement, and enforce reasonable controls.

Prohibitions
Prohibits a firearm industry member from manufacturing, marketing, offering for sale, or selling, a firearm-related product that is "abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety."

Provides that "abnormally dangerous" does **not** mean a firearm's inherent capacity to cause injury or lethal harm. Provides that there is a presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if any of the following is true:

1. The product's features render it "most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities"; or

continued

2. The product is designed, sold, or marketed in a manner that foreseeably promotes conversion of a legal firearm-related product into an illegal firearm-related product; or

3. The product is designed, sold, or marketed in a manner that targets minors or other individuals who are legally prohibited from accessing firearms.

Prohibits a firearm industry member from engaging in any conduct related to the sale or marketing of firearm-related products that is a violation of the following sections:

1. Civil C. 1770(a)(1)–(a)(9) [Unfair methods of competition and unfair or deceptive acts or practices related to the sale or lease of goods or services];
2. B&P 17200 [unfair competition];
3. B&P 17500 [false advertising]; or
4. B&P 17508 [false or misleading advertising claims].

Definitions
Defines "firearm-related product" as a firearm, ammunition, firearm precursor part, firearm component, or firearm accessory.

Defines "reasonable controls" as procedures and practices to:

1. Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under California or federal law, or a person who the industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm self or others;

2. Prevent the loss or theft of a firearm-related product from the firearm industry member; and

3. Ensure that the firearm industry member complies with all California and federal laws and does not promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.

continued

Rebuttable Presumptions
Provides that if it is alleged that a firearm industry member failed to establish, implement, and enforce reasonable controls, there is a rebuttable presumption that the member failed to implement reasonable controls if both of these conditions are satisfied:

1. The member's action or failure to act created a reasonably foreseeable risk that the harm alleged by the claimant would occur; and
2. The member could have established, implemented, and enforced reasonable controls to prevent or substantially mitigate the risk that harm would occur.

Provides that if the rebuttable presumption is established, the firearm industry member then has the burden of proving by a preponderance of the evidence that the member established, implemented, and enforced reasonable controls.

Intervening Act by a Third Party
Provides that an intervening act by a third party, including, but not limited to, criminal misuse of a firearm-related product, shall **not** "preclude a firearm industry member from liability."

Enforcement
Authorizes the Attorney General, a city attorney, or a county counsel to bring a civil action to enforce this new title. Does **not** mention district attorneys. (See more on this below.) Also permits a person who has suffered harm in California, because of a firearm industry member's conduct, to bring an action in civil court.

Authorizes a court to order injunctive relief, damages, attorney's fees and costs, and/or any other appropriate relief necessary to enforce this new title.

A Note About District Attorneys
District attorneys are not listed in new Civil C. 3273.52 as an entity that may bring an action pursuant to this new Title. This omission may or may not have been intentional. However, existing Business & Professions Code sections should provide the authority for a district attorney to bring an action against a firearm industry member pursuant to B&P 17200, 17500, or 17508 (all three of which are specified in new Civil C. 3273.51).

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B&P 17200 [unfair competition actions]: Pursuant to existing B&P 17204 and 17206, district attorneys have the authority to bring B&P 17200 actions.

B&P 17500 [false advertising]: Existing B&P 17500 is a misdemeanor crime. And existing B&P 17535 permits a district attorney to bring an action for an injunction for a violation of B&P 17500.

B&P 17508 [false or misleading advertising claims]: Pursuant to existing B&P 17536, a district attorney may bring a civil action for a violation of B&P 17508.

Civil C. 3345
(Amended)
(Ch. 78) (AB 1730)
(Effective 1/1/2023)

Adds military veterans to those groups (senior citizens and disabled persons) who are eligible to be awarded up to three times the damages authorized by statute, in successful cases to redress unfair or deceptive practices, or unfair methods of competition.

[The legislative history of the bill states that military veterans are the target of con artists and scammers more often than non-veterans.]

Code of Civil Procedure

C.C.P. 135
(Amended)
(Ch. 792) (AB 2596)
(Effective 1/1/2023)

Adds that Genocide Remembrance Day (April 24) and the Lunar New Year are **not** judicial holidays. By its absence from the list of days that are not judicial holidays, June 19 (Juneteenth) **is** now a judicial holiday.

and

(Amended)
(Ch. 761) (AB 1801)
(Effective 1/1/2023)

These two bills, along with AB 1655 (Chapter 753), add three days to the list of state holidays specified in Gov't C. 6700:

1. June 19 ("Juneteenth," AB 1655);
2. April 24 ("Genocide Remembrance Day,"AB 1801); and
3. "Lunar New Year" (AB 2596), specified as the "date corresponding with the second new moon following the winter solstice, or the third new moon following the winter solstice should an intercalary month intervene." (See section 6700 in the Government Code section of this digest for more information on the exact date of Lunar New Year, which is different every year.)

The list of state holidays in Gov't C. 6700 is **not** the same as the list of judicial holidays. Section 135 of the Code of Civil Procedure provides that days specified in Gov't C. 6700 are judicial holidays **except** those listed in C.C.P. 135, such as September 9 (Admission Day) and the second Monday in October (Columbus Day). Both AB 1801 and AB 2596 amend C.C.P. 135 to specifically provide that April 24 (Genocide Remembrance Day) and the Lunar New Year are **not** judicial holidays. June 19 (Juneteenth) is not added to C.C.P. 135, so it **is** a judicial holiday.

C.C.P. 215
(Amended)
C.C.P. 241
(New)
(Ch. 326) (AB 1981)
(Effective 1/1/2023)

C.C.P. 215 is amended to increase the mileage reimbursement for jurors in criminal and civil cases by requiring that jurors be paid for each mile traveled when leaving court after the first day, instead of only the mileage traveled to get to court after the first day. Jurors will now be paid for roundtrip mileage to and from the court, after the first day. Retains the per mile rate of thirty-four cents ($0.34). Retains the $15 per day attendance payment to jurors, and continues to provide that it is payable for each day after the first day.

Requires jurors and prospective jurors who have been summoned, to be provided with free access to existing public transit services, unless the court is in an area where there is

continued

no existing public transit that is reasonably available to the court facility. Permits a court to partner with public transit operators to create new programs or to continue existing transit programs, or, to provide a method of reimbursement to jurors of up to $12 per day.

Requires a court, before determining that transit service is not reasonably available to the court facility, to contact the public transit operator to inquire whether new transit options may be implemented near the court.

New C.C.P. 241 requires the Judicial Council to sponsor a two-year pilot program to study whether increases in juror compensation and mileage reimbursement increase juror diversity and participation. Requires the Judicial Council to select six counties with regional and geographic diversity, including Alameda County, and requires those counties to collect demographic information from jurors. Requires the Judicial Council's report to be submitted to the Legislature by September 1, 2026.

[Uncodified Section One of this bill provides that it is the Legislature's intent to improve the juror experience, promote juror diversity, and encourage participation in jury service by increasing the compensation and reimbursement that jurors receive for their service.]

C.C.P. 340.1
(Amended)
(Ch. 444) (AB 2959)
(Effective 1/1/2023)

Adds that a civil action for damages suffered as a result of childhood sexual assault need **not** be presented to any government entity prior to the commencement of the civil action. This section continues to provide that an action for childhood sexual assault may be commenced until the plaintiff's 40th birthday or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after reaching adulthood was caused by the sexual assault.

[According to the legislative history of this bill, survivors of sexual assault perpetrated by local government employees were not required to present their claims to the government prior to filing a civil lawsuit, but claims against state agencies were still required to be presented first to the state government entity. This bill eliminates all government presentation requirements.]

C.C.P. 340.16
(Amended)
(Ch. 442) (AB 2777)
(Effective 1/1/2023)

The Sexual Abuse and Cover Up Accountability Act.

Sexual Assault Claims Revived Until 12/31/2026
Amends subdivision (b) to revive, until December 31, 2026, civil claims seeking to recover damages as a result of a sexual assault that occurred on or after January 1, 2009 and on or after the plaintiff's 18th birthday, that would otherwise be barred solely because the statute of limitations expired. Excludes claims litigated to finality in court before January 1, 2023 and claims that were resolved by a written settlement agreement between the parties entered into before January 1, 2023.

[AB 1619, effective January 1, 2019, created C.C.P. 340.16 and established a 10-year statute of limitations, thereby extending the statute of limitations for sexual assault claims whose statute of limitations had not yet expired. But it did not apply to actions whose statute of limitations had already expired by January 1, 2019. According to the legislative history of this bill, its purpose is to revive claims that could have been brought if AB 1619 had applied its 10-year statute of limitations retroactively.]

Sexual Assault Claims Are Revived Until 12/31/2023 if There Was a Cover Up by an Entity Legally Responsible for Damages
Creates a new subdivision (e) to revive sexual assault claims when there has been a cover up by an entity that is legally responsible for damages, whereby the entity, including, but not limited to, its officers, directors, representatives, employees, or agents, engaged in a cover up or attempted cover up of a previous instance or allegations of sexual assault by an alleged perpetrator. Applies to a sexual assault that occurred on or after the plaintiff's 18th birthday that would otherwise be barred before January 1, 2023, solely because the statute of limitations expired. Provides that such an action may proceed if already pending in court on January 1, 2023, or, if not filed by that date, may be commenced between January 1, 2023 – December 31, 2023.

Defines "cover up" as a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.

continued

Provides that new subdivision (e) also revives related claims, such as for wrongful termination and sexual harassment arising out of the sexual assault.

Excludes claims litigated to finality in court before January 1, 2023 and claims that were resolved by a written settlement agreement between the parties entered into before January 1, 2023.

C.C.P. 391
C.C.P. 391.1
(Amended)
(Ch. 84) (AB 2391)
(Effective 1/1/2023)

Permits a person who is protected by a domestic violence restraining order to file a motion to have the person restrained by the protective order (i.e., the domestic violence abuser) declared a vexatious litigant, if the abuser commences, prosecutes, or maintains one or more litigations against the protected person that are determined to be meritless and that caused the protected person to be harassed or intimidated.

[The legislative history of this bill states its purpose is to prevent "abuse by litigation"—to prevent the courts from being used by domestic violence abusers to further harass and traumatize their victims.]

C.C.P. 706.050
(Amended)
(Ch. 849) (SB 1477)
(Effective 9/1/2023)

Changes the formula for determining what portion of a judgment debtor's wages can be garnished, for the purpose of lowering garnishment amounts significantly, even for debtors who are considered middle-income and high-income.

[This bill will adversely affect crime victims who are owed victim restitution from convicted defendants, and who seek to enforce their restitution orders in civil court when a defendant has failed or refused to pay.]

Education Code

Educ. C. 49390
Educ. C. 49391
Educ. C. 49392
Educ. C. 49393
Educ. C. 49394
Educ. C. 49395
(New)
(Ch. 144) (SB 906)
(Effective 1/1/2023)

Adds new Article 8 in Chapter 8 of Part 27 of Division 4 of Title 2 of the Education Code, entitled "Threats of Homicide at School."

Threats and Perceived Threats
New section 49393 requires a school official who is alerted to or observes any threat or perceived threat, to immediately report it to law enforcement. New Educ. C. 49390 defines "threat or perceived threat" as any writing or action of a pupil that creates a reasonable suspicion that the pupil is preparing to commit a homicidal act related to school or a school activity. Provides that this may include the possession, use, or depiction of firearms, ammunition, shootings, or targets in association with the infliction of physical harm, destruction, or death, in a social media post, journal, class note, or other media associated with the pupil; or may include a warning by a parent, pupil, or other individual. The report may be made to a peace officer employed by the school, or to the local law enforcement agency that has jurisdiction over the school.

New section 49394 requires law enforcement, upon receiving the report of a threat or perceived threat, to immediately investigate and assess the threat. Requires that the investigation and assessment include both a review of the DOJ firearm registry and a search of the school site if the search is justified by a reasonable suspicion that it would produce evidence related to the threat or perceived threat.

Information About Safe Storage of Firearms
New Educ. C. 49391 requires the State Department of Education, by July 1, 2023, to develop "model content," in consultation with local educational agencies, civil rights groups, and DOJ, on the topic of the safe storage of firearms. New Educ. C. 49392 requires K-12 schools, starting with the 2023-2024 school year, to include information about the safe storage of firearms in the annual notice that is sent by schools to parents.

Immunity From Liability For Schools
New Educ. C. 49395 provides immunity from civil liability for schools, for any alleged damages relating to the requirements of these new laws.

Elections Code

Elections C. 1300
(Amended)
(Ch. 743) (AB 759)
(Effective 1/1/2023)

Requires that elections for district attorneys and sheriffs be held in presidential election years instead of in the years that governors are nominated and elected. Provides that this applies to both general law and charter counties, **except** those charter counties that, on or before January 1, 2021, expressly specified in their charter when an election for district attorney or sheriff would occur.

[The legislative history of the bill lists San Bernardino, San Francisco, and Santa Clara as counties whose charters specify when district attorney and sheriff elections will occur, and states that Los Angeles County's charter specifies when the sheriff will be elected. Each charter county should look at its own charter.]

Provides that a district attorney or sheriff elected in 2022 shall serve a six-year term and that the next election for that office will be at the 2028 presidential primary.

Permits a board of supervisors to adopt an ordinance requiring other county officers to be elected during presidential election years, except for a county superintendent of schools. (Calif. Const. Art. IX, § 3 provides for a county superintendent of schools to be elected in a gubernatorial election year.)

Elections C. 2212
(Repealed & Added)
(Ch. 14) (SB 504)
(Effective 3/31/2022)

This section is repealed entirely and a new Elections C. 2212 is added. The repealed version required the clerk of the superior court for each county to furnish to the Secretary of State and to the county elections official, on a monthly basis, the names, addresses, and dates of birth of all persons committed to state prison for a felony conviction since the last monthly report. Based on this information, the Secretary of State and the county elections official were required to cancel the voter registration affidavits of persons currently imprisoned for felony convictions.

The new version of Elections C. 2212 requires CDCR to provide to the Secretary of State, on a weekly basis, the name, address, date of birth, last four digits of the social security number, and driver's license or state-issued identification number if available, of persons in state

continued

prison for the conviction of a felony, persons on state prison parole, and persons released from state prison who are no longer under the jurisdiction of CDCR. The Secretary of State is then required to provide information to county election officials, who then must cancel the affidavit of voter registration of anyone imprisoned in state prison for a felony conviction, or notify a convicted felon who has been released from state prison that his or her right to vote has been restored.

[Pursuant to existing Elections C. 2101, a person is entitled to vote in California if he or she is a U.S. citizen, a resident of California, at least age 18, and not imprisoned in a state prison. An amendment to section 2101 in 2020 (AB 646) removed the prohibition on parolees voting and California voters approved Proposition 17 at the November 2020 election, which amended the California Constitution to eliminate the prohibition on parolees voting.]

Environmental Law

F&G 5517
(Amended)
(Ch. 437) (AB 2109)
(Effective 1/1/2023)

Expands the misdemeanor crime of taking a white shark to also prohibit the following:

1. Using any shark bait, shark lure, or shark chum to attract a white shark;
2. Placing any shark bait, shark lure, or shark chum into the water within one nautical mile of a shoreline, pier, or jetty when a white shark is either visible or known to be present; or
3. Placing any shark bait, shark lure, or shark chum into the water for the purpose of viewing any shark when a white shark is visible or known to be present.

Defines "shark bait, shark lure, or shark chum" as a surface or underwater decoy, or, a product or device used to attract sharks by their sense of taste, smell, or sight, including blood, fish, or other material upon which sharks may feed.

[Pursuant to existing F&G 12000, a violation of this section is a misdemeanor crime.]

[According to the legislative history of this bill, the Legislature is concerned about cage diving businesses and white shark tours that use bait, chum, or decoys to attract sharks for their customers, which puts swimmers and surfers at risk.]

F&G 5650
F&G 5650.1
(Amended)
(Ch. 56) (AB 195)
(Effective 6/30/2022)

Amends F&G 5650, which prohibits depositing or placing a specified substance into the waters of this state, such as petroleum, acid, coal, factory refuse, or any substance or material deleterious to fish, plant life, mammals, or bird life.

Amends F&G 5650.1, which permits the bringing of an action to collect a civil penalty of up to $25,000 for a violation of F&G 5650, plus a penalty of up to $10 for each gallon or pound of material discharged.

F&G 5650
Expands the prohibition on using the affirmative defense specified in this section, by prohibiting its use in a civil action that alleges a violation of F&G 5650 resulting from unlicensed cannabis cultivation. The affirmative defense

continued

continues to be prohibited when a civil action pursuant to F&G 5650.1 is brought for any type of F&G 5650 violation. Now the affirmative defense also does not apply in any civil action that is brought for a violation of F&G 5650 resulting from unlicensed cannabis cultivation.

[The affirmative defense consists of three parts:

1. The defendant complied with all laws and regulations requiring that the discharge or release be reported to a government agency;
2. The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state; and
3. The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.]

F&G 5650.1
Adds a county counsel as an entity that may bring a civil action for a violation of F&G 5650, but only if the violation results from unlicensed cannabis cultivation.

(This bill also amends F&G 13103 to add a county counsel's costs in investigating and prosecuting a F&G 5650.1 action to the list of items that a county's "fish and wildlife propagation fund" may pay for.)

F&G 5650.1 continues to authorize a district attorney, a city attorney, or the Attorney General to bring a civil action for any type of F&G 5650 violation.

[These amendments are a part of a lengthy bill pertaining to cannabis.]

F&G 13103
(Amended)
(Ch. 56) (AB 195)
(Effective 6/30/2022)

Adds a county counsel's costs in investigating and prosecuting a civil action pursuant to F&G 5650.1 for unlicensed cannabis cultivation, to the list of items that a county's "fish and wildlife propagation fund" may pay for. Continues to provide that county propagation fund money may be used to pay for the costs incurred by a district attorney or city attorney in investigating and prosecuting civil and criminal actions for violations of the Fish & Game Code.

continued

[This bill also amends F&G 5650.1. See above.
This amendment is part of a lengthy bill pertaining to cannabis.]

P.C. 374.3
(Amended)
(Ch. 784) (AB 2374)
(Effective 1/1/2023)

Increases the maximum fines for illegal dumping in commercial quantities, and requires the defendant to remove, or pay the cost of removing, the waste matter. Expands the authority of the court in non-commercial quantity dumping cases to make cleanup orders.

Creates new paragraphs in subdivision (h) (illegal dumping in commercial quantities) to do the following:

1. Increases the maximum fine for a defendant who is the owner or operator of a business that employs more than 10 full-time employees. The fine for a first conviction of an owner/operator is $1,000 to $5,000. The fine for a second conviction is $3,000 to $10,000. And the fine for a third or subsequent conviction is $6,000 to $20,000.

2. Requires the court to order the defendant remove, or pay the cost of removing, any waste matter the defendant dumped on public or private property.

3. Requires the court, when the defendant holds a license or permit to conduct business that is substantially related to the illegal dumping, to notify the applicable licensing or permitting entity about the conviction.

4. Requires the licensing or permitting entity to post the conviction on its Internet website.

Illegal dumping in commercial quantities remains a misdemeanor crime punishable by up to six months in jail and by a fine. The fine remains mandatory.

Expands the authority of the court in non-commercial quantity dumping cases by eliminating references to conditions of probation, thereby authorizing a court to order a defendant to remove, or pay the costs of removing, the waste matter the defendant dumped, regardless of whether probation is granted.

Expands the court's authority in all cases to order community service by eliminating references to conditions

continued

of probation, thereby authorizing a court to order the defendant to perform community service by picking up waste matter for at least 12 hours, regardless of whether probation is granted.

Eliminates the provision in subdivision (j) providing that in an unusual case where the interest of justice would be served, a court may waive or reduce a fine. Instead, amended subdivision (j) provides that in setting the amount of a fine, the court must consider the defendant's ability to pay, and these four circumstances:

1. The defendant's present financial position;
2. The defendant's reasonably discernible financial position for the next year;
3. The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing; and
4 Any other factors that may bear upon the defendant's financial capability to pay the fine.

P.C. 14306
P.C. 14307
P.C. 14308
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Makes several changes to these three sections that deal with funding for environmental training and enforcement. Among other things, amends P.C. 14308 to add community-based nonprofit organizations:

1. Specifically adds community-based nonprofit organizations to the list of entities (public prosecutors, peace officers, firefighters, and state and local environmental regulators) that may be trained in the investigation and enforcement of environmental laws by grants that are awarded to public and private entities.

2. Adds community-based nonprofit organizations to those entities (local environmental regulators) that may be awarded grants for the enforcement of environmental laws.

3. Provides that grants awarded to community-based nonprofit organizations may be used to address environmental violations that occur in, or disproportionately impact, disadvantaged communities.

Water C. 1052
(Amended)
(Ch. 56) (AB 195)
(Effective 6/30/2022)

Adds city attorneys and county counsels to those (the Attorney General) who are authorized to bring a civil action for a violation of this section (unauthorized diversion or use of water) resulting from unlicensed cannabis cultivation. Requires a city attorney or county counsel to obtain approval for the action from the State Water Resources Control Board and provides that if the city attorney or county counsel has heard nothing from the Board within 21 days of a notice of intent to file an action, the city attorney or county counsel may deem the Board's silence as approval.

Continues to authorize the Attorney General to bring any type of water diversion or unauthorized use action pursuant to this section, whether or not the violation results from unlicensed cannabis cultivation.

Adds an additional penalty for a violation of this section involving unlicensed cannabis cultivation: $3,500 for each day the unauthorized diversion or use of water occurs.

Adds that upon appropriation by the Legislature, funds recovered in an action pursuant to this section shall be used to proportionally reimburse the Attorney General, city attorney, county counsel, and the State Water Resources Control for the costs of bringing the action, including reasonable attorney's fees.

[This amendment is part of a lengthy bill pertaining to cannabis.]

Evidence Code

Evid. C. 351.3
Evid. C. 351.4
(Re-Enacted)
(Ch. 168) (SB 836)
(Effective 8/22/2022)

Re-enacts both of these sections, which had sunset dates of January 1, 2022. Both sections prohibit the disclosure of a person's immigration status in open court unless a judge first determines in an in-camera hearing that immigration status is admissible. Evid. C. 351.4 applies to criminal cases and Evid. C. 351.3 applies to civil cases.

Provides that this prohibition does **not** apply to cases in which a person's immigration status is necessary to prove an element of an offense or claim, or an affirmative defense; does **not** limit discovery in a criminal action; and does **not** prohibit a person or his or her attorney from voluntarily revealing immigration status to the court.

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

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

The Legislative Counsel's Digest for this bill notes that it required a two-thirds vote because of the California Constitution's Right to Truth in Evidence provision. The Right to Truth in Evidence is in Article One, Section 28(f)(2) of the California Constitution, and provides that relevant evidence shall not be excluded except upon a two-thirds vote of each house of the Legislature. This bill passed by well over the two-thirds threshold, receiving zero "no" votes, with 21 legislators not voting.

Evid. C. 352.2
(New)
(Ch. 973) (AB 2799)
(Effective 1/1/2023)

Adds new Evid. C. 352.2 for the purpose of making it more difficult to have rap lyrics admitted into evidence.

Provides that in any criminal proceeding where a party seeks to admit as evidence a "form of creative expression," the court, while balancing probative value against the substantial danger of undue prejudice pursuant to Evid. C. 352, shall consider the following:

1. That the probative value of the expression for its literal truth or as a truthful narrative is minimal unless the expression is created near in time to the charged crime, bears a sufficient level of similarity to the charged crime, or includes factual detail not otherwise publicly available; and

2. That undue prejudice includes, but is not limited to, the possibility that the trier of fact will, in violation of Evid. C. 1101, treat the expression as evidence of the defendant's propensity for violence or general criminal disposition as well as the possibility that the evidence will explicitly or implicitly inject racial bias into the proceedings.

Requires the court, if proffered and relevant to the issues in a case, to consider the following as well as any additional relevant evidence offered by either party:

1. Credible testimony on the genre of creative expression as to the social or cultural context, rules, conventions, and artistic techniques of the expression;

2. Experimental or social science research demonstrating that the introduction of a particular type of expression explicitly or implicitly introduces racial bias into the proceedings; and

3. Evidence to rebut such research or testimony.

Defines "creative expression" as the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including, but not limited to, music, dance, performance art, visual art, poetry, literature, film, and other such objects or media.

continued

Requires the question of whether a form of creative expression is admissible, to be heard in limine outside the presence and hearing of the jury, pursuant to existing Evid. C. 402.

[*Note*: Because of Proposition 8's "Right to Truth-in-Evidence" provision in Article One, section 28(f)2) of the California Constitution, which prohibits the exclusion of relevant evidence in a criminal proceeding, this bill was marked as requiring a two-thirds vote. The bill more than met that threshold, passing both the Assembly and the Senate with zero "no" votes, with 21 legislators not voting.]

[Uncodified Section One of this bill sets forth the Legislature's finding that current law allows an artist's creative expression to be admitted as evidence in criminal proceedings "without a sufficiently robust inquiry into whether such evidence introduces bias or prejudice into the proceedings." It also includes the Legislature's intent to ensure that "the use of an accused person's creative expression will not be used to introduce stereotypes or activate bias against the defendant, nor as character or propensity evidence" and "to recognize that the use of rap lyrics and other creative expression as circumstantial evidence of motive or intent is not a sufficient justification to overcome substantial evidence that the introduction of rap lyrics creates a substantial risk of unfair prejudice."]

Evid. C. 782.1
(Amended)
(Ch. 86) (SB 357)
(Effective 1/1/2023)

Adds the word "former" before a cross-reference to P.C. 653.22 (the crime of loitering with the intent to commit prostitution), in conformity with this bill's repeal of P.C. 653.22. See P.C. 653.22 in the Penal Code section of this digest, for more information.

[Evid. C. 782.1 provides that the possession of a condom is not admissible in a prosecution for a violation of P.C. 372 (nuisance), 647(a) (lewd act in public), 647(b) (prostitution), or former 653.22, if the offense is related to prostitution.]

Evid. C. 1103
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of sex crimes for which opinion evidence, reputation evidence, and specific instances of a victim's sexual conduct is not admissible by a defendant to prove consent by the victim.

continued

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that Evid. C. 1103 still applies to P.C. 262 cases.]

Evid. C. 1107
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes for which expert testimony about intimate partner battering may be admissible.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or when an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that Evid. C. 1107 still applies to P.C. 262 cases.]

Family Code

Family C. 6307
(Repealed & Added)
(Ch. 420) (AB 2960)
(Effective 7/1/2023)

Makes some modifications to this section regarding the electronic filing of domestic violence restraining order petitions.

Continues to require that beginning July 1, 2023, a court must permit the electronic filing of petitions for domestic violence restraining orders and domestic violence temporary restraining orders, and any filings related to those petitions.

Requires the court to act on these filings in accordance with existing Family C. 246, which provides that a request for an order must be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business.

Requires that documents (e.g., notice of the court date, copies to serve on the respondent, temporary restraining order) be provided to the petitioner electronically, unless the petitioner, at the time of electronic filing, notes that the documents will be picked up from the court.

Deletes provisions requiring a court to post a telephone number on its Internet website and to staff that telephone during normal business hours, so that the public can call to obtain information about electronic filing. Instead, adds a requirement that information about electronic filing and access to a court's self-help center be prominently displayed on each court's Internet homepage. Requires also that each self-help center make available information about domestic violence restraining orders.

Family C. 6308
(Amended)
(Ch. 420) (AB 2960)
(Effective 1/1/2023)

Adds a support person as defined in Family C. 6303 to those (parties and witnesses) who may appear remotely at the hearing on a petition for a domestic violence restraining order.

Family C. 6303 provides that a victim of domestic violence may select any individual to act as a support person, that no training or special qualification is required to be a support person, and that the function of a support person is to provide moral and emotional support for the victim.

continued

Deletes the provision requiring a court to post a telephone number on its Internet website and to staff that telephone 30 minutes before the start of a court session and during the court session, so that the public can call to obtain assistance regarding remote appearances. Continues to require each court to develop local rules and instructions for remote appearances and to post them on its Internet website.

Family C. 6344
(Repealed & Added)
(Ch. 591) (AB 2369)
(Effective 1/1/2023)

Requires a court to issue an order for the payment of a prevailing protected party's attorney's fees and costs when a domestic violence protective order is sought.

Previously this section permitted a court to issue an order for the payment of attorney's fees and costs of the prevailing party, whether or not the prevailing party was the plaintiff seeking a domestic violence protective order or was the party sought to be restrained (the respondent).

Permits, but does not require, a court to issue an order for the payment of attorney's fees and costs for a prevailing party who was sought to be restrained, but only if the petition for the protective order is proven to be frivolous or solely intended to harass, intimidate, or cause unnecessary delay.

Family C. 6345
(Amended)
(Ch. 88) (SB 935)
(Effective 1/1/2023)

Clarifies that a domestic violence protective order may be renewed more than once. Permits a renewal to be for five or more years, or to be permanent.

(Previously, a domestic violence protective order was permitted to be renewed "either for five years or permanently," and it was not clear whether there could be subsequent renewals.)

The initial domestic violence restraining order continues to have a maximum duration of five years.

Food & Agricultural Code

Food & Ag. C. 4158
(Amended)
(Ch. 139) (AB 311)
(Effective 1/1/2023)

Expands the ban on gun shows at the Del Mar Fairgrounds in San Diego County by adding firearm precursor parts to those items (firearms and ammunition) that are prohibited from being sold there. This section continues to permit gun buyback events, held by a law enforcement agency, at the Del Mar Fairgrounds.

Food & Ag. C. 11891
(Amended)
(Ch. 574) (AB 211)
(Effective 9/27/2022)

Increases the minimum and maximum fines for misdemeanor pest control crimes in Food & Ag. C. 11401–12408. The minimum fine is increased from $500 to $5,000 and the maximum fine is increased from $5,000 to $50,000. Continues to provide for a jail sentence of 10 days to six months.

Food & Ag. C. 12996
(Amended)
(Ch. 574) (AB 211)
(Effective 9/27/2022)

Increases the minimum and maximum fines for misdemeanor and felony crimes relating to pesticides in Food & Ag. C. 12500–15340.

For misdemeanor crimes, increases the minimum fine from $500 to $5,000 and increases the maximum fine from $5,000 to $50,000. Continues to provide for a maximum jail sentence of six months.

For second and subsequent misdemeanor convictions, increases the minimum fine from $1,000 to $10,000 and increases the maximum fine from $10,000 to $75,000. Continues to provide for a maximum jail sentence of six months.

For felony convictions (i.e., an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment), increases the minimum fine from $5,000 to $15,000 and increases the maximum fine from $50,000 to $100,000. Continues to provide for a punishment of 16 months, two years, or three years in state prison, or up to one year in jail.

Food & Ag. C. 12999.6
(New)
(Ch. 574) (AB 211)
(Effective 1/1/2023)

Provides that the Director of Pesticide Regulation may levy a civil penalty of up to $20,000 for specified violations in the Food & Agricultural Code, or may refer any of the violations "to the proper enforcement agency, including the district attorney of the county where the violations occurred or the Attorney General."

Government Code

Gov't C. 1031
(Amended)
(Ch. 959) (AB 2229)
(Effective 9/30/2022)

and

Gov't C. 1031
(Amended)
Gov't C. 1031.5
(Repealed)
(Ch. 825) (SB 960)
(Effective 1/1/2023)

Effective September 30, 2022, AB 2229 amends Gov't C. 1031 to add bias language back into the minimum standards for being a peace officer. Revises the requirement to be free from any physical, emotional, or mental condition that might adversely affect the exercise of peace officer powers, to also require that the person be free of bias against race, ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of peace officer powers.

(This bias language was added to Gov't C. 1031 in 2020 by AB 846, effective January 1, 2021, but was inadvertently deleted by AB 1096 in 2021, effective January 1, 2022.)

Beginning January 1, 2023, SB 960 amends Gov't C. 1031 to eliminate the requirement that a peace officer be a U.S. citizen, or be a permanent resident who is eligible for and has applied for citizenship. Instead, a person who wants to be a peace officer need only be legally authorized to work in the United States.

Repeals Gov't C. 1031.5, which had provided that a permanent resident immigrant who is employed as a peace officer would be disqualified from holding that position, if the peace officer had not obtained citizenship within three years due to failing to cooperate with the processing of the citizenship application, or if citizenship was denied.

[This bill also repeals V.C. 2267, which had required that a person appointed as a member of the California Highway Patrol be a U.S. citizen.]

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)
(All 2021 Legislation)
(Effective 1/1/2023)

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

AB 473
Effective 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

continued

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 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): §§ 7923.600–7923.630
  - Article 2 (Obtaining Access to Law Enforcement Records): §§ 7923.650–7923.655
  - Article 3 (Records of Emergency Communications to Public Safety Authorities): § 7923.700
  - Article 4 (Records Specifically Relating to Crime Victims): §§ 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 made conforming and technical changes in numerous sections in numerous codes (Business & Professions, Civil, 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. 7920.000–7931.000, below, for the details on how new Division 10 is organized.

Gov't C. 6700
(Amended)
(Ch. 753) (AB 1655)
(Effective 1/1/2023)

and

(Amended)
(Ch. 761) (AB 1801)
(Effective 1/1/2023)

and

(Amended)
(Ch. 792) (AB 2596)
(Effective 1/1/2023)

Adds three days to the list of state holidays, one of which is also a judicial holiday (Juneteenth):

1. June 19 ("Juneteenth," AB 1655);
2. April 24 ("Genocide Remembrance Day," AB 1801); and
3. "Lunar New Year" (AB 2596), specified as the "date corresponding with the second new moon following the winter solstice, or the third new moon following the winter solstice should an intercalary month intervene."

(The winter solstice is the shortest day of the year, approximately December 22. "Intercalary" means a day inserted in a calendar to harmonize with the solar year, such as adding a 29th day to February every four years. Internet research yielded this information: Lunar New Year in 2023 will be on January 22 and in 2024 on February 10. In 2022 it was February 1 and in 2021 it was February 12. Lunar New Year is a multi-day festival, but AB 2596 limits the state holiday to the first day – the day of the second or third new moon after the winter solstice.)

A Note About Judicial Holidays
Note that the list of state holidays is **not** the same as the list of judicial holidays. C.C.P. 135 provides that days specified in Gov't C. 6700 are judicial holidays **except** those listed in C.C.P. 135, such as September 9 (Admission Day) and the second Monday in October (Columbus Day). Both AB 1801 and AB 2596 amend C.C.P. 135 to specifically provide that April 24 (Genocide Remembrance Day) and the Lunar New Year are **not** judicial holidays. June 19 (Juneteenth) is not added to C.C.P. 135, so it **is** a judicial holiday.

Gov't C. 7286
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Revises subdivision (b)(4) to clarify the requirement that a law enforcement agency's policies include a prohibition against retaliation against an officer who reports another officer for violating a law or regulation. Subdivision (b)(4) now reads: "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 law enforcement agency who has the authority to investigate the violation."

Gov't C. 7599.110
Gov't C. 7599.111
Gov't C. 7599.112
Gov't C. 7599.113
(New)
(Ch. 855) (AB 1700)
(Effective 1/1/2023)

Creates new Chapter 35 in Division 7 of Title 1 of the Government Code entitled "Online Marketplace Suspected Stolen Goods Act."

Requires the Attorney General, by January 1, 2023, to establish on its Internet website an "online marketplace suspected stolen goods reporting location" for individuals to report items found on an online marketplace that they suspect are stolen.

Requires the Attorney General to provide this information to the applicable local law enforcement agency and regional property crimes task force (P.C. 13899).

Requires, beginning February 1, 2023, an online marketplace to display a link to the stolen goods reporting location on the Attorney General's Internet website.

Defines "online marketplace" as an electronically based or accessed platform that may be accessed on an internet website or through an application, that enables third parties to sell consumer products in California and that hosts one or more third-party sellers.

[See also new Civil C. 1749.8–1749.8.5 in the Civil Code section of this digest, which require high-volume third-party sellers to provide identifying information to online marketplaces and consumers, and authorize the Attorney General to seek civil penalties for a violation.]

Gov't C. 7920.000–7931.000
(Reorganized and Renumbered from Gov't C. 6250–6276.48)
(Ch. 614) (AB 473)
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AB 473
Effective 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."

continued

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 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): §§ 7923.600–7923.630
  - Article 2 (Obtaining Access to Law Enforcement Records): §§ 7923.650–7923.655
  - Article 3 (Records of Emergency Communications to Public Safety Authorities): § 7923.700
  - Article 4 (Records Specifically Relating to Crime Victims): §§ 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, 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): §§ 7920.000–7920.005
  - Article 2 (Effect of Recodification): §§ 7920.100–7920.120
  - Article 3 (Effect of Division): § 7920.200

continued

- Chapter 2 (Definitions): §§ 7920.500–7920.545

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

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

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

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

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

Part 4 (Enforcement)
- Chapter 1 (General Principles): §§ 7923.000 –7923.005

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

continued

Part 5 (Specific Types of Public Records)

- Chapter 1 (Crimes, Weapons, and Law Enforcement)
  - Article 1 (Law Enforcement Records, Generally): §§ 7923.600–7923.630
  - Article 2 (Obtaining Access to Law Enforcement Records): §§ 7923.650–7923.655
  - Article 3 (Records of Emergency Communications to Public Safety Authorities): § 7923.700
  - Article 4 (Records Specifically Relating to Crime Victims): §§ 7923.750–7923.755
  - Article 5 (Firearm Licenses and Related Records): §§ 7923.800–7923.805

- Chapter 2 (Election Materials and Petitions)
  - Article 1 (Voter Information): §§ 7924.000–7924.005
  - Article 2 (Initiative, Referendum, Recall, and Other Petitions and Related Materials): §§ 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): §§ 7924.300–7924.335
  - Article 2 (Pollution): §§ 7924.500–7924.510
  - Article 3 (Building Standards and Safety Requirements): §§ 7924.700
  - Article 4 (Enforcement Orders): § 7924.900

- Chapter 4 (Financial Records and Tax Records): §§ 7925.000–7925.010

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

- Chapter 6 (Historically or Culturally Significant Matters): §§ 7927.000–7927.005

continued

- Chapter 7 (Library Records and Similar Matters): §§ 7927.100–7927.105

- Chapter 8 (Litigation Records and Similar Matters): §§ 7927.200–7927.205

- Chapter 9 (Miscellaneous Public Records): §§ 7927.300–7927.305

- Chapter 10 (Personal Information and Customer Records): §§ 7927.400–7927.420

- Chapter 11 (Preliminary Drafts and Similar Materials): §§ 7927.500

- Chapter 12 (Private Industry): §§ 7927.600–7927.605

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

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

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

- Chapter 16 (Regulation of Financial Institutions and Securities): §§ 7929.000–7929.010

- Chapter 17 (Security Measures and Related Matters): §§ 7929.200–7929.215

- Chapter 18 (State Compensation Insurance Fund): §§ 7929.400–7929.430

continued

- Chapter 19 (Test Materials, Test Results, and Related Matters): §§ 7929.600–7929.610

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

- Chapter 2 (Alphabetical List): §§ 7930.100–7930.215

Part 7 (Operative Date: 1/1/2023): § 7931.000

Govt. C. 8594.13
(New)
(Ch. 476) (AB 1314)
(Effective 1/1/2023)

Authorizes a law enforcement agency to request that the California Highway Patrol (CHP) activate a "Feather Alert" for an indigenous person missing under unexplained or suspicious circumstances. Permits the activation of a Feather Alert if the law enforcement agency has already used available local and tribal resources; and believes that the person is in danger because of age, health, mental or physical disability, or environmental or weather conditions, or is in the company of a potentially dangerous person, or that there are other factors indicating the person may be in peril; and there is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

Govt. C. 8594.15
(New)
(Ch. 107) (AB 1732)
(Effective 1/1/2023)

Re-authorizes a "Yellow Alert" notification system, in order to issue and coordinate alerts for V.C. 20001 hit-and-run crimes that result in the death of a person. (This section was previously in effect from January 1, 2016 to December 31, 2018 and applied to both deaths and serious injury that resulted from a hit-and-run.)

Provides that a law enforcement agency may request that the California Highway Patrol (CHP) activate a Yellow Alert if all of the following conditions are met:

1. A person has been killed in a hit-and-run;

2. There is an indication that a suspect fled the scene using the state highway system or is likely to be seen by the public on the state highway system;

continued

3. The law enforcement agency has additional information, such as the complete license plate number, a partial license plate number plus additional characteristics such as the make or color of the vehicle, or the identity of the suspect; and

4. Public dissemination of information could help avert further harm or accelerate apprehension of the suspect.

This new section is modeled after existing Gov't C. 8594.10, which authorizes Silver Alerts when an elderly, developmentally disabled, or cognitively impaired person is missing; and existing Gov't C. 8594.5, which authorizes Blue Alerts when a law enforcement officer is attacked; and existing Gov't C. 8594, which authorizes Amber Alerts for child abductions.

Requires CHP to track the number of Yellow Alert requests it receives and to submit a report to the Legislature by January 1, 2026 that evaluates the efficacy, advantages, and disadvantages of the Yellow Alert System.

Provides that this new section will sunset on January 1, 2026.

Gov't C. 12525.2
(Amended)
(Ch. 899) (SB 882)
(Effective 1/1/2023)

Expands the types of information that a law enforcement agency is required to report monthly to DOJ about use of force incidents (the shooting of a civilian by a peace officer, the shooting of a peace officer by a civilian, use of force by a peace officer against a civilian that results in serious bodily injury or death, and use of force by a civilian against a peace officer that results in serious bodily injury or death). Adds the following:

1. Whether the officer perceived the civilian had a developmental, physical, or mental disability;
2. The reason for the contact;
3. The reason for using force;
4. The injuries sustained;
5. If any medical aid was rendered; and
6. Whether the officer observed signs of erratic behavior, drug or alcohol impairment, or mental, physical, or developmental disability.

Gov't C. 12525.5
(Amended)
(Ch. 805) (AB 2773)
(Effective 1/1/**2024**)

Beginning January 1, 2024, this section is amended to clarify that the requirement of local and state law enforcement agencies to report annually to the Attorney General on all stops conducted by the agency, apply to pedestrian stops, traffic stops, and any other kind of stop. Previously this section was worded simply in terms of "stop."

Also adds additional information that must be reported: "The reason given to the person stopped at the time of the stop."

[This bill also adds new V.C. 2806.5 to require that a peace officer making a traffic or pedestrian stop, **before** engaging in questioning related to a criminal investigation or traffic violation, state the reason for the stop, unless the officer has a reasonable belief that withholding the reason for the stop is necessary to protect life or property from imminent threat. See the Vehicle Code section of this digest for more information.]

Gov't C. 12838.65
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Provides that while the Division of Juvenile Justice (DJJ) is in the process of closing, the director has the authority to transfer powers, functions, responsibilities, and jurisdiction to CDCR.

Provides that upon final closure of DJJ, all remaining powers, functions, responsibilities, and jurisdiction will be vested with CDCR.

Gov't C. 12954
(New)
(Ch. 392) (AB 2188)
(Effective 1/1/**2024**)

Prohibits an employer from discriminating against a person in hiring, termination, or in any condition of employment, or from penalizing a person, based on either of the following:

1. The person's use of cannabis off the job and away from the workplace (but does permit an employer to discriminate in hiring or to penalize a person based on a pre-employment drug screening that does **not** screen for non-psychoactive cannabis metabolites); or

2. An employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in hair, blood, urine, or other bodily fluids.

continued

Provides that this new section does not apply to an employee in the building and construction trades or to an applicant or employee hired for a position that requires a federal government background investigation or security clearance.

Provides that nothing in this section permits an employee to possess, to be impaired by, or to use, cannabis on the job.

[According to the legislative history, the purpose of this bill is to protect job applicants and employees from being penalized for cannabis use off of the job and away from the worksite. After the psychoactive ingredient in cannabis—tetrahydrocannabinol (THC)—is metabolized, it is stored in the body as a non-psychoactive cannabis metabolite. The metabolite indicates previous cannabis use, but not cannabis impairment. Uncodified Section One of this bill claims that the presence of non-psychoactive cannabis metabolite has no correlation to impairment on the job.]

[Businesses, trade associations, and the California Chamber of Commerce opposed this bill. It had bipartisan opposition in the Legislature, with 18 no votes and 13 not voting in the Assembly, and 11 no votes and 1 not voting in the Senate.]

Gov't C. 13956
(Amended)
(Ch. 771) (AB 160)
(Sections 2 and 3)
(Effective **7/1/2024** if specified contingencies are met)

Makes several changes to expand eligibility for compensation from the California Victim Compensation Board, and provides that the changes will be operative on July 1, 2024 **only if** "General Fund moneys over the multi-year forecasts beginning in the 2024-25 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions in this section."

These are the amendments that will go into effect if the above conditions are met:

1. Subdivision (b)(1) changes "victim of domestic violence" to simply "victim" so that a victim of **any** crime cannot be determined to have failed to cooperate with law enforcement based on the victim's conduct at the scene of the crime.

2. Subdivision (b)(1) also changes "victim of sexual assault, domestic violence, or human trafficking" to simply "victim" so that for a victim of **any** crime, a lack of

continued

cooperation cannot be found solely because the victim delayed reporting the qualifying crime.

3. Subdivision (c)(1) eliminates the prohibition on a person who is convicted of a violent felony (P.C. 667.5(c)) and who is also a crime victim eligible for compensation, receiving compensation until after discharge from probation, parole, postrelease community supervision, or mandatory supervision. Instead, convicted violent felons may receive compensation as a crime victim as soon as they are released from a correctional institution, whether or not they are still on some form of supervision.

Gov't C. 13957
(Amended)
(Ch. 48) (SB 189)
(Effective 6/30/2022)

and

(Amended)
(Ch. 707) (SB 877)
(Effective 1/1/2023)

and

(Amended)
(Ch. 771) (AB 160)
(Section 5.5)
(Effective 7/1/2024 if specified contingencies are met)

SB 189 increases the victim compensation benefit limits that the California Victim Compensation Board (CalVCB) is authorized to pay for relocation, funeral, and crime scene cleanup expenses, and expands eligibility for reimbursement for counseling-related services.

Relocation payments are increased from a maximum of $2,000 to a maximum of $3,418. Continues to permit CalVCB to increase the payment for relocation expenses above the maximum allowed if there are unusual, dire, or exceptional circumstances.

Funeral and burial payments are increased from a maximum of $7,500 to a maximum of $12,818.

Crime scene clean up payments are increased from a maximum of $1,000 to a maximum of $1,709.

SB 877 expands eligibility for reimbursement for counseling-related expenses by eliminating the requirement that a counseling provider be licensed in California, and instead requiring that the provider be licensed in the state in which the crime victim lives, thereby making crime victims who have moved to another state eligible for reimbursement for counseling expenses.

AB 160 makes several changes to expand eligibility for compensation from the California Victim Compensation Board, and provides that the changes will be operative on July 1, 2024 **only if** "General Fund moneys over the multi-year forecasts beginning in the 2024-25 fiscal year are available to support ongoing augmentations and actions,

continued

and if an appropriation is made to backfill the Restitution Fund to support the actions in this section."

Eliminates the $5,000 and $10,000 caps on reimbursement for outpatient mental health counseling, for victims and derivative victims.

Further increases relocation payments from a maximum of $3,418 to a maximum of $7,500. Continues to permit CalVCB to increase the payment for relocation expenses above the maximum allowed if there are unusual, dire, or exceptional circumstances.

Further increases funeral and burial payments from a maximum of $12,818 to a maximum of $20,000.

Increases, from $35,000 to $100,000 the maximum total award a victim or derivative victim may receive.

Gov't C. 13957.5
(Amended)
(Ch. 771) (AB 160)
(Sections 6 and 7)
(Effective 7/1/2024 if specified contingencies are met)

Makes several changes to expand eligibility for compensation to crime victims and derivative victims from the California Victim Compensation Board (CalVCB) for loss of income and support, and provides that the changes will be operative on July 1, 2024 **only if** "General Fund moneys over the multi-year forecasts beginning in the 2024-25 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions in this section."

Compensation for Derivative Victims
Expands compensation for derivative victims beyond those who are the parent or legal guardian of a victim who was under age 18 at the time of the crime, to the following:

1. A parent, legal guardian, or spouse of the victim (no limitation as to the age of the victim) who is present at the hospital during the period the victim is hospitalized as a direct result of the crime. Continues to also require that the treating physician certify that the presence of the derivative victim at the hospital is reasonably necessary for the victim's treatment, and adds an alternative basis for compensation—that the derivative victim's presence is reasonably necessary for the victim's psychological well-being.

continued

2. A spouse of the victim, a parent or legal guardian of the victim, or a derivative victim living in the household of the victim (no limitation as to the age of the victim) at the time of the crime, when the victim died as a direct result of the crime.

Maximum Amount Payable For One Crime
Increases, from $70,000–100,000, the maximum amount payable to all derivative victims as the result of one crime.

The Calculation of Income or Support Loss
Adds new paragraphs to provide that victims and derivative victims are eligible for compensation for loss of income if they were employed or receiving earned income benefits at the time of the crime, or, if they were fully or partially employed or receiving income benefits for a total of at least two weeks in the 12 months preceding the qualifying crime, or had an offer of employment at the time of the crime and were unable to begin employment as a result of the crime. Provides that a derivative victim who was legally dependent on the victim at the time of the crime for support, is eligible for compensation even if the victim was not employed or receiving earned income benefits at the time of the crime, if the victim was fully or partially employed or receiving earned income benefits for a total of at least two weeks in the 12 months preceding the qualifying crime, or had an offer of employment at the time of the crime and was unable to begin employment as a result of the crime.

Requires that compensation for loss of income or support be based on the actual loss the victim or derivative victim sustains, or on the wages that would have been earned if employed for 35 hours per week at minimum wage, whichever is greater. Provides that for crime victims under age 18 at the time of the crime, compensation for loss of income must be based on the actual loss sustained.

Guidelines
Requires CalVCB to adopt guidelines by July 1, 2025 for accepting evidence and approving a claim for loss of income or support, and requires CalVCB to accept any form of reliable corroborating information regarding a victim's or derivative victim's income, including a statement from an employer, a pattern of deposits into a bank, pay stubs or copies of checks, a copy of a job offer letter, and income tax records.

Gov't C. 13959
(Amended)
(Ch. 771) (AB 160)
(Sections 8 and 9)
(Effective 7/1/2024 if specified contingencies are met)

Makes two changes to appeal procedures when a claim for victim compensation is denied by the California Victim Compensation Board (CalVCB), and provides that the changes will be operative on July 1, 2024 **only if** "General Fund moneys over the multi-year forecasts beginning in the 2024-25 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions in this section."

Shortens, from six months to four months, the time CalVCB has to issue a written decision after receiving an appeal. Lengthens the time for the filing of a request to reconsider a decision. Instead of limiting the filing of a reconsideration request to within 30 days of a decision being personally delivered or within 60 days of the decision being mailed, reconsideration may be requested within 365 days of the personal delivery or mailing of a decision.

Gov't C. 13962
(Amended)
(Ch. 771) (AB 160)
(Sections 10 and 11)
(Effective 7/1/2024 if specified contingencies are met)

Adds information about the existence of trauma recovery centers to the list of things (the existence of victim centers and provisions relating to compensation from the Victims of Crime Program) that a law enforcement agency is required to inform crime victims about.

Also adds a new subdivision (g) to require the California Victim Compensation Board to provide hospitals that have emergency departments, with posters describing the Victims of Crime program and with compensation application forms to distribute to victims, derivative victims, and their family members.

Gov't C. 26666
Gov't C. 26666.2
Gov't C. 26666.5
Gov't C. 26666.10
(New)
(Ch. 417) (AB 2791)
(Effective 1/1/2023)

Requires a sheriff or marshal to accept an electronic signature on a document that requests the sheriff or marshal to serve a court document, and on a summons order, or other court notice to be served. Prohibits a sheriff or marshal from requiring an original or "wet" (ink on a paper) signature.

Requires a sheriff or marshal to accept transmission by email, fax, or in-person delivery of a Judicial Council form used by litigants in civil cases to request service of process or notice by a sheriff or marshal, and of a court summons, notice, or order (e.g, a restraining order) that a person needs

continued

served, if the court has granted a fee waiver or the litigant is otherwise exempt from paying a fee for the service of a summons, order, or notice.

Authorizes any person to deliver forms for service to a sheriff or marshal, on behalf of a litigant.

Requires the Judicial Council, by January 1, 2024, to create a statewide form to be used by litigants in civil actions to request service of process or notice by a sheriff or marshal.

Prohibits a sheriff or marshal from reviewing the "substance" of a summons, order, or notice to be served. Permits a sheriff or marshal to inspect whether the proper forms are present; whether a case number appears on the summons, order or notice; whether the order to be served, including a restraining order, bears a judge's signature and court certification or seal; and whether the information on the order materially matches the information regarding the person to be served on the Judicial Council form.

[Law enforcement objected to this provision, arguing that law enforcement agencies currently do not serve documents blindly. Instead, they review documents for accuracy, validity, and legal sufficiency before serving them to ensure that the agency is not exposed to civil and criminal liability. Proponents of the bill say that in some cases, sheriffs are refusing to serve documents on substantive grounds, by re-adjudicating the validity of the submitted documents, and thus their review of the documents to be served should be limited.]

[According to the legislative history of this bill, one purpose of the bill is to modernize the systems that facilitate the service of process, which have not kept up with the modernization of court operations and the use of technology. Levying officers, including sheriff's departments, are not required to accept electronic submission of requests for service of process and it is asserted that they have the authority to reject these service of process requests. Low-income litigants and abuse survivors rely on sheriffs for service of court documents, such as restraining orders.]

Gov't C. 27491.25
(Amended)
(Ch. 223) (SB 925)
(Effective 1/1/2023)

Expands this section, which pertains to alcohol and drug testing on persons killed in motor vehicle accidents:

1. Adds medical examiners to those (coroners) that this section applies to, including provisions mandating alcohol testing when a person is killed while driving or riding in a motor vehicle, or as a result of being struck by a motor vehicle.

2. Requires, instead of permits, testing for drugs if the deceased was the driver of a vehicle. Requires coroners and medical examiners to "perform drug screening and confirmatory tests for drugs, as referenced in Section 312 of the Vehicle Code."

   [V.C. 312 defines "drug" as a substance or combination of substances, other than alcohol, which could impair, to an appreciable degree, a person's ability to drive a vehicle in the manner that an ordinarily prudent and cautious person would drive.]

   [According to the history of the bill, the Legislature is concerned about an increase in drugged driving—both prescription and recreational drugs.]

3. Instead of requiring blood and urine samples to be taken from the deceased person, coroners and medical examiners are now required to take blood and "other biological samples, when appropriate."

4. Makes this section applicable to the testing of a deceased person under age 15 whose death occurs no more than 48 hours after a motor vehicle accident. Previously this section did not apply when a person under age 15 died more than 24 hours after a motor vehicle accident. (Continues to provide that this section does not apply to the testing of a deceased person under age 15 unless the surrounding circumstances indicate the possibility of alcohol or drug consumption. Therefore, with the amendment made by this bill, this section does not apply to the testing of a deceased person under age 15 if death occurs more than 48 hours after a motor vehicle accident, or if the surrounding circumstances do not indicate the possibility of alcohol or drug consumption.)

continued

5. Adds that if available, hospital antemortem (before death) samples must be used instead of postmortem (after death) samples.

[This bill is almost identical to AB 551, which the Governor vetoed in 2019 because it required testing for specific drugs such as opioids, methamphetamine, and cocaine and it was the Governor's position that coroners should use their professional judgment to determine what to test for. AB 551 was worded in terms of requiring coroners and medical examiners to perform drug tests "including, but not limited to, opioids including fentanyl, benzodiazepines, methamphetamine and related amphetamines, and cocaine." This year's bill, SB 925, does not specify which drugs must be tested for.]

[This bill also amends V.C. 20011 to add medical examiners to those persons (coroners) who are required to report motor vehicle deaths on a monthly basis to CHP. V.C. 20011 is also amended to require that chemical test results, both alcohol and drug, be reported to CHP when available. See the Vehicle Code section of this digest for more information.]

Gov't C. 68645.15
(New)
(Ch. 191) (SB 1096)
(Effective 1/1/2023)

Provides that a defendant's request for an ability-to-pay determination for an infraction violation through the online tool shall not impact eligibility to attend traffic violator school pursuant to V.C. 42005. (V.C. 42005 authorizes a court to order or permit a person who is convicted of a traffic offense to attend a licensed traffic violator school.)

Existing Gov't C. 68645 requires the Judicial Council to develop an online tool for adjudicating infraction violations, including ability-to-pay determinations. The online tool is to be implemented on a phased schedule and made available statewide by June 30, 2024. The Judicial Council has created the "MyCitations" tool and has partnered so far with several Superior Courts (*https://mycitations.courts.ca.gov/home*). MyCitations allows defendants to look up their infraction citation and submit a request to the court for a reduction of the traffic fine, a payment plan, community service, or more time to pay. According to the legislative history of this bill, the concern is that people who have committed traffic infractions are not able to use MyCitations and also participate in traffic violator school, because the MyCitations homepage advises defendants that they should **not** use it if they would like to attend traffic school.

Gov't C. 69894
(New)
(Ch. 200) (AB 1576)
(Effective 7/1/2024)

Beginning July 1, 2024, requires a superior court, in any courthouse that has a lactation room for court employees, to provide a lactation room for "court users" in an area that is accessible to the public using the court facility. Prohibits the lactation room from being a bathroom and requires that it be "shielded from view and free from intrusion while it is being used by a court user to express milk." No definition of "court user" is provided. The term could include crime victims, witnesses, defendants, attorneys, and court observers.

Gov't C. 71651.1
(New)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Prohibits a trial court from retaliating against an official reporter (i.e., a court reporter) who notifies the judicial officer that technology or audibility issues are interfering with the creation of the verbatim record for a remote proceeding pursuant to P.C. 977(f) and (g).

Provides that this new section will sunset on January 1, 2024.

P.C. 977 is also amended by this bill and provides in subdivision (f)(3) that the court shall require in-person proceedings in several scenarios, including when the "quality of the technology or audibility at a proceeding inhibits the court reporter's ability to accurately prepare a transcript of the proceeding." P.C. 977(g)(1) provides that before a court may conduct a remote proceeding, the court must have a process for a defendant, defense attorney, prosecutor, witness, official reporter, court interpreter, or other court personnel to alert the judicial officer about technological or audibility issues that arise during the proceedings. P.C. 977(g)(2) provides that when a court conducts a remote proceeding that will be reported by an official reporter, the reporter must be physically present in the courtroom.

[See P.C. 977 in the Penal Code section of this digest for more information about the amendments made by this bill to that section.]

Harbors & Navigation Code

H&N 655.2
(Amended)
(Ch. 203) (AB 1682)
(Effective 1/1/2023)

Exempts rescue and public safety watercraft from the five-mile-per-hour speed limit in areas that are within 100 feet of swimmers or within 200 feet of a beach, swimming float, or diving platform. Specifically exempts these from the five-mile-per-hour speed limit:

1. Clearly identifiable lifeguard rescue vessels engaged in public safety activities;
2. Public safety vessels engaged in law enforcement or public safety activities that are displaying distinctive blue lights; and
3. Personal watercraft identifiable as lifeguard rescue vessels or public safety vessels operating in the surf zone.

Defines "public safety activities" as including public agency sanctioned patrolling, traffic control, assisting disabled vessels, salvage operations, firefighting, providing medical assistance, search and rescue, and training.

[The purpose of this bill is to get help faster to swimmers and boaters in trouble. According to the legislative history of the bill, most rescues by lifeguards take place within 200 feet of a beach.]

Health & Safety Code

H&S 1259.3
(New)
(Ch. 169) (SB 864)
(Effective 1/1/2023)

Requires a general acute care hospital, if it conducts a urine drug screening to diagnose a patient's condition, to include testing for fentanyl in the drug screening.

This new section is known as Tyler's Law and its purpose is to reduce fentanyl-related overdose deaths. Provides that this new section will sunset on January 1, 2028.

H&S 11014.5
H&S 11364.5
(Amended)
(Ch. 201) (AB 1598)
(Effective 1/1/2023)

Excludes from the definition of "drug paraphernalia" any testing equipment designed, marketed, or used to test a substance for the presence of fentanyl or an analog of fentanyl, or ketamine and gamma hydroxybutyric acid (GHB) (date rape drugs). The purpose of the bill is to legalize the possession of items such as fentanyl test strips in order to reduce fentanyl overdoses and deaths, and smart straws and drink check wristbands that can detect drugs used in sexual assaults.

Both H&S 11014.5 and 11364.5 include in the definition of "drug paraphernalia" testing equipment used to identify or analyze the strength or purity of controlled substances. H&S 11014.5 defines drug paraphernalia for purposes of the California Uniform Controlled Substances Act (H&S 11000–11651). By removing from that definition testing equipment that detects specified substances, existing laws such as H&S 11364.7(a)(1) (the misdemeanor crime of delivering or furnishing drug paraphernalia knowing it will be used to test, produce, conceal, inject, or ingest a controlled substance into the human body) will not apply to items such as fentanyl test strips, smart straws, and drink check wristbands.

H&S 11364.5 requires a place of business that sells or furnishes drug paraphernalia to keep the drug paraphernalia in a separate room or enclosure and to not permit a minor to enter unless accompanied by a parent or legal guardian. A business will now be able to display testing equipment for fentanyl, ketamine, and GHB in areas that a minor can access without being accompanied by a parent or legal guardian.

[A violation of H&S 11364.5 is not a crime. It is grounds for the revocation or non-renewal of a license or permit.]

continued

Uncodified Section 3 of this bill provides that it is the Legislature's intent that the bill **not** affect the ability to lawfully possess, furnish, or transfer paraphernalia in compliance with California law, including pursuant to H&S 11364.7(a)(2) and 121349.1 (both of which apply to the distribution or exchange of hypodermic needles and syringes authorized by a public entity).

H&S 11361.9
(Amended)
(Ch. 387) (AB 1706)
(Effective 1/1/2023)

Makes a number of changes to this section that requires DOJ to review records in its database and identify specified convictions relating to cannabis (H&S 11357, 11358, 11359, 11360) that are eligible for recall and dismissal, dismissal and sealing, or re-designation pursuant to existing H&S 11361.8. Continues to require DOJ to notify prosecutors of all cases in their jurisdiction that are eligible for relief.

The changes:

1. Permits the prosecution to challenge a resentencing only if the defendant is still serving a sentence for a cannabis conviction. (Continues to provide that July 1, 2020 was the deadline for prosecutors to review all other cases and determine whether to challenge the granting of relief.)

2. Provides that if relief was not challenged by July 1, 2020, the conviction is deemed unchallenged, recalled, dismissed, or redesignated, as applicable, and the court shall issue an order, by March 1, 2023, recalling and dismissing the sentence, or dismissing and sealing the conviction, or redesignating the conviction.

   Previously it was provided that "the court shall reduce or dismiss the conviction pursuant to Section 11361.8."

3. Adds the deadline of March 1, 2023, by which the courts are required to update records in accordance with this section and report to DOJ all convictions that have been recalled dismissed, redesignated, or sealed.

4. Adds the deadline of July 1, 2023, by which DOJ is required to update the records in its state criminal history database and adds that DOJ must ensure that inaccurate criminal history information is not disseminated.

continued

5. Requires DOJ to conduct a public "awareness campaign" about the process for requesting one's own criminal history information pursuant to existing P.C. 11120–11127 in order to verify that the information has been updated, along with information about how to contact the courts, the prosecution, and public defenders "to assist in verifying the updates."

6. Adds that a conviction or arrest that has been sealed pursuant to H&S 11361.8 is deemed never to have occurred, and that "the person may reply accordingly to any inquiry about the events."

7. Requires DOJ, from March 1, 2023 to June 1, 2024, to submit quarterly reports to the Legislature about the number of cases recalled, dismissed, resentenced, sealed and redesignated in each county; the status of cases challenged by the prosecution and the disposition of the challenged cases; the number of convictions in the state criminal history database that are potentially eligible for relief; and the status of the public awareness campaign.

H&S 11857
H&S 11857.1
H&S 11857.2
H&S 11857.3
H&S 11857.4
H&S 11857.5
(New)
(Ch. 15) (SB 349)
(Effective 1/1/2023)

Adds new Chapter 14 in Part 2 of Division 10.5 of the Health & Safety Code, entitled the "Ethical Treatment for Persons with Substance Use Disorder." Provides that this new chapter may be cited as the "California Ethical Treatment for Persons with Substance Use Disorder Act."

Civil Actions
Provides that a violation of this new chapter is subject to a civil penalty of up to $20,000 for each violation, and authorizes a district attorney, county counsel, city attorney, the Attorney General, or any person who has suffered injury or damages, to bring a claim. Also permits the State Department of Health Care Services to enforce this new chapter.

Client Bill of Rights
Requires every treatment provider to adopt and make available to clients and prospective clients, a client bill of rights that includes rights such as the right to be treated with honesty, respect, and dignity; to be informed about the risks of treatment and the expected results; to be treated by qualified staff; to receive evidence-based treatment; to receive care in a treatment setting that is safe and ethical;

continued

to be free from mental and physical abuse, exploitation, coercion, and physical restraint; and to be informed of the law regarding how to make a complaint.

Marketing and Advertising Materials
Requires the marketing and advertising materials of treatment providers to be accurate, complete, and in plain language that is easy to understand.

Violations
New H&S 11857.3 makes unlawful the conduct specified below, and provides that a violation constitutes a deceptive act or practice under the Unfair Competition Law (B&P 17200–17210).

[Existing B&P 17204 authorizes district attorneys, the Attorney General, and specified county counsels and city attorneys to bring unfair competition actions.]

1. A treatment provider making a false or misleading statement, or providing false or misleading information, about the nature, identity, or location of treatment services.

2. A treatment provider making a false or misleading statement about its status as an in-network or out-of-network provider.

3. Any person or entity providing, or directing another person or entity to provide, false or misleading information about the identity of, or contact information for, a treatment provider.

4. Any person or entity including false or misleading information about the Internet address of a treatment provider's website, or surreptitiously directing or redirecting the reader to another website.

5. Any person or entity suggesting or implying that a relationship with a treatment provider exists, unless the treatment provider has provided express, written consent to indicate that relationship.

6. Any person making a false or misleading statement about substance use disorder treatment services.

continued

Prohibits a treatment provider from requesting, receiving, or retaining payment for substance use disorder treatments provided to a client as a result of unlawful conduct specified in this new chapter.

Civil Penalties
New H&S 11857.5 provides that a violation of this new chapter is subject to a civil penalty of up to $20,000 for each violation and/or declaratory relief, and that a claim may be brought by a district attorney, the Attorney General, a county counsel, a city attorney, or a person who has suffered injury or damages as a result of the violation. A person or entity that suffers injury or damages may also be awarded three times the damages sustained, reasonable attorney's fees, and costs.

It appears that a violation of H&S 11857.3 (see above) may be pursued as a violation of the Unfair Competition Law (B&P 17200–17210) or as a violation of this new chapter (H&S 11857.5). The penalty for a violation of the chapter is significantly higher (up to $20,000 per violation) than an Unfair Competition Law violation (up to $2,500 per violation pursuant to B&P 17206).

[Uncodified Section One of the bill sets forth the Legislature's declaration that the intent of this bill is "to deny advantage to programs and personnel that engage in or support predatory, unsafe, and unethical practices."]

H&S 26275
(New)
(Ch. 244) (SB 1111)
(Effective 1/1/**2025**)

Creates new chapter 22 in Division 20 of the Health & Safety Code, entitled "Trash Receptacles and Storage Containers" to require reflective tape on dumpsters that sit on a roadway or curb. Provides that this bill shall be known as the Rick Best Safety Act.

Beginning January 1, 2025, requires a manufacturer that sells or provides for compensation (i.e., rents) a trash receptacle or storage container that is longer than three feet in length and taller than four feet in height that is designed to be placed on a roadway or the curb of a roadway in order to be emptied or picked up, to mark the receptacle or container with fluorescent yellow reflective tape. Requires the reflective tape to be six-inches wide and four-feet tall and to be placed over all four corners of the dumpster.

continued

Beginning January 1, 2026, requires a non-government owner of a trash receptacle or storage container that is longer than three feet and taller than four feet to mark it with reflector tape as described above. Also requires the owner to label the receptacle or container with the owner's name and telephone number.

Provides that a manufacturer or owner who fails to mark a receptacle or container as required is guilty of an infraction punishable by a fine of $100 for a first violation, $500 for a second violation, and $1,000 for a third or subsequent violation.

Uncodified Section 3 of the bill states the Legislature's finding and declaration that this new section addresses a matter of statewide concern and therefore applies to all cities, including charter cities.

[According to the legislative history of the bill, Rick Best was a legislative staffer and lobbyist who died after a traffic collision with an unmarked dumpster.]

H&S 122191
(New)
(Ch. 548) (AB 2380)
(Effective 1/1/2023)

Prohibits an online pet retailer from offering, brokering, making a referral for, or facilitating, a loan or financing option for the adoption or sale of a dog, cat, or rabbit. Does not apply to service animals.

The legislative history of this bill asserts that there are entities that engage in predatory lending practices for the purchase of pets—offering loans at high interest rates or with hidden fees. In 2020, AB 2152 amended H&S 122354.5 to prohibit a pet store from selling or adopting out dogs, cats, or rabbits. However a pet store is permitted to provide space to a public animal control agency or shelter, or to an animal rescue group to make dogs, cats, or rabbits available for adoption. According to the legislative history of AB 2380, the pet sales industry has shifted online, online sales allow puppy mills to continue to service California customers, and most of the large online brokers that ship puppies to California customers offer financing.

This new section is now a part of the existing Lockyer-Polanco-Farr Pet Protection Act in H&S 122125–122220: Article 2 of Chapter 5 of Part 6 of Division 105 of the Health & Safety Code entitled "Retail Sale of Dogs and Cats"). This

continued

Article requires retail sellers of dogs and cats to maintain health and safety standards for pets and to provide buyers and prospective buyers with written notice of various consumer rights. Existing H&S 122150 continues to provide that a violation of this Article is subject to a civil penalty of up to $1,000 per violation and that a civil action may be brought by a district attorney or city attorney.

Note: Existing sections in H&S 122125–122220 apply only to dogs and cats. New H&S 122191 is the only section that also applies to rabbits.

Insurance Code

Insurance C. 1879.1
(Repealed & Added)
(Ch. 861) (AB 1681)
(Effective 1/1/2023)

Permits self-insured employers to participate in insurance fraud meetings and authorizes district attorneys to convene insurance fraud meetings, in order to combat insurance fraud, especially workers' compensation fraud.

Authorizes representatives of self-insured employers to participate in meetings the Insurance Commissioner convenes to discuss specific information about suspected, anticipated, or completed acts of insurance fraud.

Authorizes a district attorney to convene meetings with representatives of insurance companies and representatives of self-insured employers to discuss specific information about suspected, anticipated, or completed acts of insurance fraud. Requires that the Insurance Commissioner, or a deputy commissioner, or an employee from the Insurance Department's Fraud Division or Legal Division, attend these meetings.

Limits a district attorney to convening one meeting per month.

Authorizes a party that convenes a meeting (e.g., the Insurance Commissioner or a deputy commissioner) to invite a district attorney to participate, if the insurance fraud to be discussed occurred or may occur in the county the district attorney represents. Permits a district attorney to send a representative to such a meeting, but requires that the person be an employee who is licensed by the State Bar of California.

Provides that if the Insurance Commissioner reasonably believes or knows that a fraudulent claim is being made based on information obtained at a meeting, the commissioner may share this information with any district attorney with whom the Insurance Department has entered into a written agreement for the investigation and prosecution of insurance fraud.

Continues to provide immunity from civil liability for libel and slander so that suspected, anticipated, and completed acts of insurance fraud may be freely discussed at these meetings.

Insurance C. 12928.7
(New)
(Ch. 540) (SB 1040)
(Effective 1/1/2023)

Permits the Insurance Commissioner to make a restitution order against a person found to have been selling insurance products without a license issued by the Department of Insurance, and authorizes a district attorney, a city attorney, the Attorney General, the Insurance Commissioner, or any person owed restitution, to judicially enforce the restitution order.

Permits the court to award attorney's fees and court costs to the prevailing plaintiff. Provides that a restitution order is subject to judicial review.

Requires that the restitution order cite the factual basis for the order; state the persons or classes of persons, who suffered a loss; and state the amount to be paid or property to be returned as restitution.

Defines "restitution" as the full amount that will compensate each person for direct and indirect financial and non-financial losses proximately caused by the violations.

Juvenile Offenders

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

Gov't C. 12838.65
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Provides that while the Division of Juvenile Justice (DJJ) is in the process of closing, the director has the authority to transfer powers, functions, responsibilities, and jurisdiction to CDCR.

Provides that upon final closure of DJJ, all remaining powers, functions, responsibilities, and jurisdiction will be vested with CDCR.

P.C. 290.008
(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Adds a new subdivision (h) to define what a discharged person is for purposes of the requirement to register as a sex offender, because the Division of Juvenile Justice (DJJ) is closing by June 30, 2023. (DJJ houses juvenile offenders and is a part of CDCR.)

Continues to require that a person discharged or paroled from CDCR after having been adjudicated a ward of the juvenile court pursuant to W&I 602 because of the commission or attempted commission of a specified sex offense, must register as a sex offender. Continues to provide that an offender discharged or paroled from a facility in another state that is the equivalent of DJJ, after having been committed for a specified sex offense, is required to register as a sex offender. Continues to require Tier One offenders to register for a minimum of five years and Tier Two offenders to register for a minimum of 10 years.

New subdivision (h) provides that a discharged person includes all of the following:

1. A ward in the custody of DJJ on or after July 1, 2022, who, prior to discharge, is returned by DJJ or by the chief probation officer of the county to the court of jurisdiction for alternative disposition, because of the closure of DJJ. Requires DJJ to inform the ward of the duty to register before the ward is returned to the court.

2. A patient described in new W&I 1732.10 (i.e., an offender receiving treatment at a state hospital).

continued

[Existing W&I 1756 authorizes DJJ to place persons with mental health disorders or developmental disabilities in state hospitals for treatment.]

Requires DJJ to inform the patient of the duty to register immediately prior to the closure of DJJ.

3. A person described in new W&I 1732.9 (i.e., an offender subject to the custody, control, and discipline of DJJ who has been sentenced to state prison for a felony committed while in the custody of DJJ).

   Requires CDCR to inform the offender of the duty to register immediately prior to the offender being returned to the court of jurisdiction.

Adds a new subdivision (i) to provide that "The court of jurisdiction shall establish the point at which the ward described in subdivision (h) is required to register and notify the Department of Justice of its decision." (A registration starting point aids in the calculation of the 5- and 10-year minimum registration periods for juvenile offenders.)

[This bill also amends P.C. 457.1 to make the same changes for arson registration for juvenile offenders.]

P.C. 457.1
(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Adds a new subdivision (m) to define what a discharged person is for purposes of the requirement to register as a juvenile arson offender, because the Division of Juvenile Justice (DJJ) is closing by June 30, 2023. (DJJ houses juvenile offenders and is a part of CDCR.)

Continues to require that a person discharged or paroled from DJJ for the offense of arson or attempted arson after having been adjudicated a ward of the juvenile court must register as an arson offender until age 25. Provisions relating to arson registration for offenders convicted in adult court remain the same—lifetime registration for convictions occurring on and after November 30, 1994.

New subdivision (m) provides that a discharged person includes all of the following:

1. A ward in the custody of DJJ on or after July 1, 2022, who, prior to discharge, is returned by DJJ or by the chief

continued

probation officer of the county to the court of jurisdiction for alternative disposition, because of the closure of DJJ. Requires DJJ to inform the ward of the duty to register before the ward is returned to the court.

2. A patient described in new W&I 1732.10 (i.e., an offender receiving treatment at a state hospital).

   [Existing W&I 1756 authorizes DJJ to place persons with mental health disorders or developmental disabilities in state hospitals for treatment.]

   Requires DJJ to inform the patient of the duty to register immediately prior to the closure of DJJ.

3. A person described in new W&I 1732.9 (i.e., an offender subject to the custody, control, and discipline of DJJ who has been sentenced to state prison for a felony committed while in the custody of DJJ).

   Requires CDCR to inform the offender of the duty to register immediately prior to the offender being returned to the court of jurisdiction.

Adds a new subdivision (n) to provide that "The court of jurisdiction shall establish the point at which the ward described in subdivision (m) is required to register and notify the Department of Justice of its decision."

[This bill also amends P.C. 290.008 to make the same changes for sex offender registration for juveniles.]

W&I 208.1
(New)
(Ch. 827) (SB 1008)
(Effective 1/1/2023)

Requires a county or city youth residential placement or detention center to provide inmates with accessible and functional voice communication services, free of charge. Prohibits a county or city agency from receiving any revenue from the provision of voice communication services. The purpose of the bill is to eliminate fees for telephone calls between inmates and persons outside a detention center, and to facilitate job and house hunting.

[This bill also creates new P.C. 2084.5 to require free voice communication services in state prisons and in youth placement/detention centers operated by CDCR.]

W&I 208.3
(Amended)
(Ch. 781) (AB 2321)
(Effective 1/1/2023)

Redefines the exception to room confinement for juveniles by providing that room confinement does *not* include the confinement of a minor in a locked single-person room or cell for up to two hours when necessary for required institutional operations. (Previously this exception was worded in terms of "brief periods of locked room confinement" being permissible. This bill changes "brief periods" to "no longer than two hours.")

This section continues to define "room confinement" as the placement of a minor in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys, and continues to limit room confinement to four hours, unless specified requirements are met.

Adds that minors who are confined shall be provided with reasonable access to toilets at all hours, including during normal sleeping hours.

[Uncodified Section Two of this bill provides that it is effective only to the extent that funding is provided: "To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies **only to the extent** that the state provides annual funding for the cost increase." (Emphasis added.)]

W&I 224.70
W&I 224.71
W&I 224.72
W&I 224.73
W&I 224.74
(Amended)
(Ch. 786) (AB 2417)
(Effective 1/1/2023)

Amends the Youth Bill of Rights to eliminate references to the Division of Juvenile Facilities (which is in the process of closing) and to add references to juvenile facilities operated by probation departments or juvenile courts, in order to make the Youth Bill of Rights applicable to youth confined in local juvenile facilities.

Continues to provide that confined youth have the right to a safe, healthy, and clean environment; to be free from physical, sexual, and emotional abuse; to receive adequate and healthy meals and snacks, and clean water; to receive adequate medical, dental, vision, and mental health care; to not be searched for the purposes of harassment or humiliation; and other rights relating to contact with

continued

family, making and receiving telephone calls, exercise and recreation, religious services, quality education, etc.

Adds a number of additional rights, such as adequate and timely reproductive care; clean undergarments on a daily basis; new underwear that fits; clothing, grooming, and hygiene products that "respect" a minor's culture, ethnicity, and gender identity and expression; access to leisure reading, letter writing, and entertainment; access to postsecondary academic and career technical education courses and programs; access to computer technology and the Internet for the purpose of education; and information about parental rights.

W&I 607
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Amends subdivisions (b) and (c) to add that a court may retain jurisdiction over a person adjudged a ward of the court (W&I 602) because of the commission of a W&I 707(b) offense for two years from the date of a commitment to a W&I 875 secure youth treatment facility.

Subdivision (b)
Continues to provide that a court may retain jurisdiction over a juvenile ward who commits a W&I 707(b) offense, until age 23.

Now this subdivision provides that a court may retain jurisdiction over a juvenile ward who commits a W&I 707(b) offense, until age 23, **or for two years from the date of commitment to a secure facility, whichever occurs later**.

Subdivision (c)
Continues to provide that a court may retain jurisdiction over a juvenile ward who commits a W&I 707(b) offense until age 25, if the juvenile would have faced an aggregate sentence of seven years or more in adult court. Now this subdivision provides that a court may retain jurisdiction over a juvenile ward who commits a W& 707(b) offense and would have faced a sentence of seven years or more in adult court, until age 25, **or for two years from the date of commitment to a secure facility, whichever occurs later.**

[Existing W&I 875(c) already provides that a ward committed to a secure youth treatment facility cannot be held in secure confinement beyond age 23 or 25, depending on the circumstances, or for more than two years from the date of commitment, whichever occurs later.]

W&I 625.7
(New)
(Ch. 289) (AB 2644)
(Effective 7/1/**2024**)

Beginning July 1 2024, prohibits a law enforcement officer from using threats, physical harm, deception, or psychologically manipulative interrogation tactics during the custodial interrogation of a minor (age 17 and younger). Applies to both felony and misdemeanor cases.

Provides for this exception: The law enforcement officer reasonably believed the information sought was necessary to protect life or property from imminent threat, and the questions asked were limited to those that were reasonably necessary to obtain information related to that threat.

[This is the same exception that is in existing W&I 625.6, which requires a minor to consult with legal counsel before waiving *Miranda* rights prior to a custodial interrogation.]

Permits an officer to use a lie detector test if the test is voluntary; and was not obtained through the use of threats, physical harm, deception, or psychologically manipulative interrogation tactics; and the officer does not suggest that the lie detector results are admissible in court or misrepresent the lie detector results to the minor.

Defines "deception" as including, but not being limited to, the knowing communication of false facts about evidence, misrepresenting the accuracy of facts, or false statements regarding leniency.

Defines "psychologically manipulative interrogation tactics" as including but not being limited to, the following:

1. Maximization and minimization techniques, such as scaring or intimidating a minor by repetitively asserting guilt despite denials; or exaggerating the magnitude of the charges or the strength of the evidence, including suggesting the existence of evidence that does not exist; or minimizing the moral seriousness of the offense, such as falsely communicating the conduct is justified, excusable, or accidental;

2. Making direct or indirect promises of leniency, such as indicating the minor will be released if he or she cooperates; or

3. Employing the "false" or "forced" choice strategy, where the minor is encouraged to select one of two options,

continued

both incriminatory, but one is characterized as morally or legally justified or excusable.

[*Note*: The final version of the bill says nothing about the admissibility of a minor's statement, even if prohibited tactics are used. Presumably, a court would analyze admissibility using existing authorities to determine if the statement is voluntary and therefore admissible. A law enforcement officer who uses the prohibited tactics may be civilly liable. The introduced version of the bill applied to all interrogations (not just custodial interrogations) of youths age 25 and below, and provided that a statement would be presumed **in**admissible if a law enforcement officer used threats, physical harm, deception, or psychologically manipulative interrogation tactics. The final version of the bill contains no presumptions, is limited to custodial interrogations, and applies only to youth age 17 and younger.]

W&I 627
(Amended)
(Ch. 289) (AB 2644)
(Effective 1/1/2023)

Adds a new subdivision (c) to provide that immediately after being taken to a place of confinement, and no later than two hours after a minor has been taken into custody, a probation officer must notify the public defender or the indigent defense provider for the county, that the minor has been taken into custody.

[Subdivision (a) continues to require an officer who takes a minor to a probation officer at a juvenile hall or to any other place of confinement, to immediately notify the minor's parent or guardian. Subdivision (b) continues to require that a minor taken to a place of confinement be notified within one hour of the right to make at least two telephone calls–one to a parent, guardian, relative, or employer, and one to an attorney.]

W&I 628
(Amended)
(Ch. 811) (SB 384)
(Effective 1/1/2023)

Adds new requirements for a county probation department when it takes a minor into custody. (Continues to require a probation department to release a minor to a relative unless the minor is a danger to self or others, is likely to flee, or has violated an order of the juvenile court.)

continued

This bill requires probation departments to do the following:

1. Create and make public a procedure whereby the relatives of a minor in custody may identify themselves to the probation department and be provided with the notices that existing provisions of W&I 628 require, such as an explanation of the various options to participate in the care and placement of the minor.

2. Notify the State Department of Social Services, by January 1, 2024, about whether it has adopted one of the suggested practices for family finding in the All-County Letter 18-42, and whether that practice has been implemented through training, memoranda, and/or manuals.

W&I 628.2
(New)
(Ch. 796) (AB 2658)
(Effective 1/1/2023)

Provides that beginning January 1, 2023, a minor is entitled to have one day credited against the maximum term of confinement for each day, or fraction thereof, that the minor serves on electronic monitoring.

Prohibits electronic monitoring devices from being used to converse with a minor, or to eavesdrop or record a conversation.

Requires that if electronic monitoring is imposed for more than 30 days, the court must hold a hearing every 30 days to ensure that the minor does not remain on electronic monitoring for an "unreasonable length of time." Requires a court to consider whether there are less restrictive conditions of release that would achieve the rehabilitative purpose of the juvenile court.

Requires DOJ to collect data regarding minors on electronic monitoring, as specified in new P.C. 13012.4, which this bill creates. See the Penal Code section of this digest for more information.

[Uncodified Section One of this bill claims that minors are frequently imprisoned in their homes, that electronic monitoring is highly restrictive, that electronic monitoring rules set up minors to fail, and that electronic monitors are visible and make buzzing or beeping sounds which result in a minor feeling shame and anxiety when away from home.]

W&I 636
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Adds a new subdivision (g) to provide that each placement of a minor in a community treatment facility on or after July 1, 2022 must comply with the requirements of W&I 4096 and must be reviewed by the court pursuant to W&I 727.12.

[Among other things, W&I 4096 requires a specified trained professional or licensed clinician to conduct an assessment if a minor is placed in a community treatment facility by a probation department or by a county child welfare agency. W&I 4096 defines "community treatment facility" with a cross-reference to H&S 1502(a)(8), which defines it as a "residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment." W&I 727.12 is also amended by this bill and requires that the placement of a minor or non-minor dependent in a community treatment facility be reviewed by the court within 45 days of the start of the placement. See below for more information about W&I 727.12.]

W&I 700.3
(New)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Authorizes a court, when handling a W&I 602 felony juvenile petition where the offense is punishable as a felony or a misdemeanor (i.e., a wobbler crime), to reduce the crime to a misdemeanor at any point in the proceedings. This new section is based on:

1. *In re E.G.* (2016) 6 Cal.App.5th 871, which holds that P.C. 17(b)(3) applies to juvenile proceedings. (P.C. 17(b)(3) authorizes a court to reduce a wobbler when probation is granted or thereafter);

2. Existing language in W&I 702 providing that if a minor has been found to have committed a wobbler offense which would in the case of an adult be punishable as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or a felony; and

3. Rule of Court 5.795, which requires a court to find on the record and note in the minutes whether a wobbler offense committed by a juvenile is a felony or a misdemeanor.

W&I 706.5
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Adds community treatment facilities to this section that requires a probation officer to include in a social study about the minor the evidence that supports a short-term residential

continued

therapeutic program, and now, a community treatment facility, continuing to be the most effective and appropriate level of care in the least restrictive environment for the minor.

W&I 706.6
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Adds community treatment facilities to those placements for minors (short-term residential therapeutic programs), for which a case plan must document specified information within 30 days of the minor's placement; and when the minor has been in the placement for more than 12 consecutive months; and before discharge from the placement.

W&I 707
(Amended)
(Ch. 330) (AB 2361)
(Effective 1/1/2023)

Increases the burden of proof on the prosecution for getting a case transferred from juvenile court to criminal (adult) court, from a preponderance of the evidence standard, to a clear and convincing evidence standard, by adding that in order to transfer a minor from juvenile to adult court, the court must find "by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court."

Requires that the reasons supporting an un-amenable finding be entered upon the minutes. Existing W&I 707(a)(3) continues to provide that if the court orders a case transferred, "the court shall recite the basis for its decision in an order entered upon the minutes." Beginning January 1, 2023, the minutes must also include the reasons that support the court's un-amenable finding.

Continues to require the court to consider the criteria in W&I 707(a)(3)(A)–(E): the degree of criminal sophistication exhibited by the minor; whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; the minor's previous delinquent history; the success of previous attempts by the juvenile court to rehabilitate the minor; and the circumstances and gravity of the offense alleged.

Retroactivity: The issue of retroactivity will almost certainly be litigated. Will this amendment be viewed as an ameliorative benefit such that it applies retroactively to all cases not yet final on appeal as of 1/1/2023? Or will it be

continued

viewed as a procedural change that applies prospectively only to all cases pending on 1/1/2023?

[California Rule of Court 5.770(a) provides that the burden of proving that a juvenile case should be transferred to adult court is on the petitioner (i.e., the prosecution) by a preponderance of the evidence. Case law also cites this standard. (*J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 715.) This amendment will prevail over the Rules of Court and abrogate case law.]

W&I 726
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Adds secure youth treatment facilities pursuant to existing W&I 875 to the definition of "physical confinement."

[In 2021, SB 92 created W&I 875, 875.5, and 876 in a new chapter entitled "Secure Youth Treatment Facilities."]

W&I 726 deals with the court's authority to limit a parent or guardian's control over a juvenile ward or a dependent child of the court, and requires a court to make specified findings before removing a minor from the physical custody of a parent or guardian.

W&I 727.12
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Adds community treatment facilities to those placements for minors (short-term residential therapeutic programs), including the initial placement and each subsequent placement, that must be reviewed by the court within 45 days of the start of the placement. Prohibits the court from granting a continuance of this hearing such that it would be held more than 60 days after the start of the placement.

As with placements in short-term residential therapeutic programs, a probation officer must request, within five days of a community treatment facility placement, that the juvenile court schedule a hearing to review the placement.

Adds a minor's court-appointed special advocate, if there is one, to the list of persons (e.g., the parties to the delinquency proceeding) upon whom the probation officer must serve a copy of the hearing request.

Requires the Judicial Council, by October 1, 2022, to amend or adopt rules of court and develop or amend forms, as necessary, to implement this section, including developing a procedure to enable a court to review the placement without a hearing.

W&I 727.13
(New)
(Ch. 589) (AB 2317)
(Effective 1/1/2023)

Provides that whenever a voluntary admission into a psychiatric residential treatment facility (PRTF) is sought for a minor or non-minor dependent who is subject to a W&I 601 or 602 petition, the court is required to review the application for the voluntary admission. Prohibits a minor from being admitted for inpatient treatment prior to court authorization unless the minor is subject to an involuntary hold.

Definitions
Defines "voluntary admission" as a parent or guardian with custody of a minor voluntarily deciding to have the minor admitted, or, if a minor is not within the custody of a parent or guardian, the minor deciding voluntarily to self-admit.

Ex Parte Application by the Probation Officer
Provides that when a voluntary admission is sought, the probation officer must file an ex parte application for an order authorizing the admission, within 48 hours of being informed of the request, or, if the courts are closed for more than 48 hours, then on the first judicial day after being informed of the request.

Sets forth detailed requirements for what the application must contain, including the name of the proposed PRTF, a description of the minor's mental disorder, and a brief description of why the PRTF is the least restrictive setting for care and why there are no other available hospitals, programs, or facilities that might better serve the minor.

The Hearing
Requires the court to schedule a hearing for the next judicial day after receiving the application. Requires the court clerk to notify the probation officer and the minor's attorney of the date, time, and place of the hearing. Requires the probation officer to notify the minor, the minor's attorney, and the minor's parent or guardian, and make arrangements to transport the minor to court. [It does not appear that a district attorney's office is present for, or involved in, these hearings.]

Sets forth detailed requirements for the hearing, including the court hearing evidence in the form of oral testimony, affidavit, or declaration, and asking the minor about his or her position on being admitted.

continued

Authorizes a court to approve admission to a PRTF only if it finds, by clear and convincing evidence, that the minor suffers from a mental disorder that may reasonably be expected to be cured or ameliorated by the program; that the PRTF is the least restrictive setting; that there is no other available program that might better serve the minor's needs; that the minor has knowingly and intelligently consented to admission; and, that the minor has been advised about patient's rights and the right to contact a patient's rights advocate.

Provides substantially the same procedures for a non-minor dependent who seeks voluntary admission to a PRTF.

Requires the court to hold a review hearing within 60 days of a minor being admitted to a PRTF, and every 30 days thereafter.

[This bill also creates new W&I 4081, 4082, and 4083 to require that psychiatric residential treatment facilities (PRTF) be licensed by the State Department of Health Care Services, to set forth requirements for PRTFs, and to require that PRTFs provide specified data to the Department of Health Care Services. It also adds new W&I 16010.10, to require, among other things, that probation departments and county child welfare agencies maintain communication with the treatment team in a PRTF in order to ensure that a ward, dependent, or non-minor dependent is receiving all necessary services and is placed in a less restrictive facility at the earliest possible time. Requires a probation department or county child welfare agency, as applicable, to develop a plan for placement and services upon discharge from a PRTF.]

W&I 727.2
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Adds community treatment facilities to those placements for minors (short-term residential therapeutic programs) for which the court, at a status review hearing and prior to the first permanency planning hearing, must make findings about the continuing necessity for and appropriateness of the placement.

W&I 730
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Makes technical amendments regarding the Pine Grove Youth Conservation Camp (where a juvenile court is permitted to place a juvenile ward) to conform to

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amendments made by this bill to W&I 1760.45 that transfer the operation of the Pine Grove Youth Conservation Camp from the Division of Juvenile Justice to CDCR, because the Division of Juvenile Justice is scheduled to close on June 30, 2023.

W&I 782
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Authorizes a judge in a county to which a juvenile case has been transferred to dismiss the petition, and adds new language providing guidance for judges on how to handle dismissal requests.

and

(Amended)
(Ch. 970) (AB 2629)
(Effective 1/1/2023)

SB 1493
Authorizes a judge who has taken jurisdiction of a juvenile case pursuant to existing W&I 750 to dismiss a petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the juvenile offender require the dismissal, or if the court finds that the juvenile is not in need of treatment. (W&I 750 permits a juvenile case to be transferred from the county where it was filed, either to the county where the minor resides or to the county of the person who is legally entitled to custody of the minor.)

This amendment means that a juvenile whose case is transferred to the county of residence could bring a dismissal motion in that county rather than having to go back to the county where the case was originally filed. Presumably the county to which the case was transferred will have more information about the juvenile's programming and progress, than the county where the petition was originally filed.

Continues to permit a judge of the juvenile court in which a petition is filed, to dismiss a petition, or to set aside findings and dismiss the petition, if the court finds that interest of justice and welfare requirements are met.

AB 2629
Incorporates the above amendments made by SB 1493, and adds language providing judges with guidance for handling requests to dismiss juvenile petitions.

Also adds language that is slanted in favor of dismissal, when a court is considering dismissal at the time it terminates jurisdiction or at any time thereafter. This

continued

language does not apply at the earlier stages of a juvenile case when a dismissal is being considered. It applies only when a court is terminating jurisdiction or after jurisdiction has terminated.

Here are the new provisions in W&I 782:

1. If the court is terminating jurisdiction, or after jurisdiction is terminated, requires the court to give great weight to the evidence offered by an offender to prove that mitigating factors are present and provides that the presence of one or more mitigating circumstances weighs greatly in favor of dismissing a petition. Provides that this great weight standard does not apply in cases where an offender "has been convicted in criminal court of a serious or violent felony." (Therefore, any offender who has already been convicted in adult court of a serious felony (P.C. 1192.7(c)) or a violent felony (P.C. 667.5(c)) would not be able to take advantage of the great weight standard when seeking dismissal of a juvenile petition.)

   Provides that mitigating circumstances include, but are not limited to, satisfactory completion of a term of probation, rehabilitation has been attained to the satisfaction of the court, dismissal of the petition would not endanger public safety, and the underlying offense is connected to mental illness, prior victimization, or childhood trauma.

2. Regardless of when a court is considering dismissal, requires that the reasons for a decision to dismiss or to not dismiss be stated orally on the record. Requires that the reasons also be entered upon the minutes if requested by either party or in any case in which the proceedings are not being reported electronically or by a court reporter.

3. Clarifies that a court may dismiss a juvenile petition at any time after the filing of the petition, and regardless of whether a petition was sustained at trial, by admission, or by plea agreement.

4. Provides that a dismissal does not relieve an offender from the obligation to pay court-ordered victim restitution.

continued

5. Provides that a dismissal after an offender is declared a ward of the court does not alone constitute a sealing of the record, and that unsealed records pertaining to a dismissed petition may be accessed, inspected, or used by a prosecuting attorney, the court, a probation department, or counsel for the offender in juvenile court proceedings when a new petition is filed.

W&I 875
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Makes a number of changes related to secure youth treatment facility commitments, maximum terms of confinement, and baseline confinement terms.

Eligibility for Commitment to a Secure Facility
Amends subdivision (a) to clarify that a juvenile ward who is found to have committed a W&I 707(b) offense must have committed that offense at age 14 or older, in order to be committed to a secure youth treatment facility. (Previously subdivision (a) was clear that a juvenile must be at least age 14 in order to be committed to a security facility, but said nothing about how old the juvenile must have been when the W&I 707(b) offense was committed.)

Maximum Term of Confinement or Imprisonment
Amends subdivision (c) to provide that the maximum term of confinement the court is required to set must be "based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation." (This language is already in existing W&I 731(b).)

Also amends subdivision (c) to address how the court should calculate a maximum term of confinement when there are multiple counts, by adding language that is almost identical to that in existing W&I 726(d)(3): the aggregate term of imprisonment specified in P.C. 1170.1(a) (which, among other things, specifies one-third the middle term for consecutive, subordinate terms) plus any additional term imposed pursuant to P.C. 667 (five-year enhancements for serious felony prior convictions, or sentencing pursuant to the Strike Law), P.C. 667.5 (prison prior enhancements), P.C. 667.6 (enhancements for sexual assault priors and full-term consecutive sentencing for current sexual assault crimes), P.C. 12022.1 (the two-year bail or own recognizance enhancement), or H&S 11370.2 (the three-year enhancement

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for H&S 11380 and conspiracy to commit H&S 11380 prior convictions.) (H&S 11380 prohibits using a minor in a controlled substance transaction or furnishing controlled substances to a minor.)

Adds that pre-commitment credits for time served must be applied against the maximum term of confinement.

Deadline for Approving an Individual Rehabilitation Plan
Amends subdivision (d) to provide that within 30 **judicial** days (instead of "30 days"), of ordering a commitment to a secure facility, the court must review and approve an individual rehabilitation plan.

Baseline Confinement Terms
Amends subdivision (e) to provide that at the conclusion of **each** required six-month review hearing, the court may order that a juvenile ward's baseline confinement term be modified downward by up to six months. Previously this subdivision could be interpreted to permit a reduction in the baseline term only at the first six-month review hearing. (Existing subdivision (b) provides that a baseline term must be based on the most serious recent offense for which the ward has been adjudicated and represent the time in custody necessary to meet the developmental and treatment needs of the ward.)

Amends subdivision (f) to provide that if a juvenile ward is transferred from a secure facility to a less restrictive program, and then is returned to a secure facility after failing to comply with the conditions of the less restrictive program, the ward's baseline or modified baseline term must be adjusted to include credit for time served in the less restrictive program.

Amends subdivision (h), regarding the matrix for setting baseline terms that the Judicial Council is tasked with developing by July 1, 2023, to provide that the individual baseline term of years to be assigned in each case may be derived from a standard range of years for each offense level or category as designated by the Judicial Council.

W&I 1732.9
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Permits specified youths subject to the Division of Juvenile Justice (DJJ) and who are currently in a CDCR facility, to voluntarily finish their juvenile commitments in a CDCR institution, rather than return to their county of commitment, when DJJ closes on June 30, 2023.

Also permits a youth who has been returned to the county of commitment after serving a state prison sentence for a felony committed while in the custody of DJJ, to choose to be transferred to a CDCR facility to finish a juvenile court commitment.

Requires that these offenders consent in writing to placement in a CDCR institution.

Subdivision (a) permits a person age 18 or older who is in the custody of DJJ immediately prior to its closure on June 30, 2023, and who has been sentenced to state prison for a felony committed while in the custody of DJJ, to voluntarily remain in an institution under the jurisdiction of CDCR to complete the remaining juvenile court commitment, instead of being returned to the county of commitment.

Subdivision (b) permits a person age 18 or older who is in the custody of CDCR pursuant to existing W&I 1732.8 when DJJ closes, to voluntarily remain in an institution under the jurisdiction of CDCR to complete the remaining juvenile court commitment, instead of being returned to the county of commitment. (W&I 1732.8 permits an offender committed to DJJ who was sentenced to state prison for a felony committed while at DJJ (formerly the California Youth Authority), to be confined in a CDCR facility while serving the state prison term.)

Subdivision (f) permits a person returned to a county of commitment after serving a state prison sentence for a felony committed while in the custody of DJJ to choose to be transferred to a CDCR facility to serve the remaining juvenile court commitment.

Before deciding whether to voluntarily choose to remain in, or be transferred to, a CDCR facility, a youth is required to meet personally with a probation officer from the commitment county and receive advice from counsel.

continued

Requires the probation officer to explain the following:

1. What will be expected of the youth if he or she returns to, or remains in, county jurisdiction, such as participation in counseling, academic or vocational programs, and work;
2. The conditions of probation the youth will be subject to; and
3. The right to voluntarily and irrevocably consent to be housed in a CDCR facility.

Provides that the juvenile court continues to have jurisdiction over the juvenile case of a youth who is in a CDCR institution.

Requires the county probation department, with the assistance of CDCR, to provide semi-annual status reports to the court.

Requires youths housed in a CDCR facility and who do not have a high school diploma or equivalent, to participate in educational or vocational programs, if available.

Prohibits a county from being charged by the state for a youth in a CDCR facility while serving a juvenile court commitment.

Provides that this section will be repealed on January 1, 2031.

W&I 1732.10
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

and

(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

AB 200 permits the State Department of State Hospitals (DSH), when the Division of Juvenile Justice (DJJ) closes on June 30, 2023, to continue to provide evaluation, care, and treatment of youth who were referred to DSH by DJJ prior to its closure and who are patients in a state hospital after DJJ closure, unless the committing court orders an alternative placement.

[Existing W&I 1756 authorizes DJJ to place persons with mental health disorders or developmental disabilities in state hospitals for treatment.]

Requires DSH to do a number of things, such as collaborate with the county probation department prior to a youth's expected discharge from DSH; provide the court, defense attorney, and probation department a copy of the youth's treatment plan every year; make notifications if a youth is

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hospitalized, dies, attempts suicide, escapes or attempts to escape; or refuses medication.

For youth remaining in a state hospital, requires a probation department to do all of the following:

1. Upon notice of discharge from a state hospital, find a placement for the youth within 45 days;

2. Provide transportation to court appearances, and transportation from the state hospital to the placement within seven days of the discharge date; and

3. Reimburse DSH for any off-site medical or surgical health care expenses, if services could not be provided by DSH and prior approval was received from the county, except in cases of emergency.

Prohibits the county of commitment from being charged by the state for a person placed in a state hospital by DJJ prior to its closure, during the placement.

Requires that a youth in a state hospital be discharged and released to the committing county no later than the "maximum juvenile confinement time, as determined by Section 607 and all other provisions of law."

Requires DJJ, immediately prior to closure, to notify the juvenile court of commitment and the juvenile counsel of record of the youth's most recent projected hearing date for court consideration.

Provides that this section will be repealed on January 1, 2031.

AB 160 makes a technical, non-substantive change in subdivision (b)(5) to correct a cross-reference to the California Code of Regulations having to do with involuntary medication.

W&I 1760.45
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Transfers the operation of the Pine Grove Youth Conservation Camp (where a juvenile court is permitted to place a juvenile ward) from the Division of Juvenile Justice (DJJ) to CDCR, because DJJ is scheduled to close on June 30, 2023.

New Felonies

P.C. 11411
(Amended)
(Ch. 397) (AB 2282)
(Effective 1/1/2023)

Elevates the crime of hanging a noose on the private property of another person or on the property of a primary school, a junior high school, a high school, college campus, public park, or place of employment, for the purpose of terrorizing another person, from a misdemeanor crime only, to a felony/misdemeanor (a wobbler) and expands it to also apply to all schools, public places, places of worship, and cemeteries. This crime was in subdivision (a), and is now in subdivision (b). See the Penal Code section of this digest for more information and for the other changes this bill makes to P.C. 11411.

P.C. 27573
(New)
(Ch. 145) (SB 915)
(Effective 1/1/2023)

Prohibits gun shows on state property by prohibiting the sale of any firearm, firearm precursor part, or ammunition on state property, in buildings that sit on state property, or on property leased, occupied, or operated by California. Includes a few exceptions, such as gun buyback events held by law enforcement, the purchase of firearms, parts, or ammunition by a law enforcement agency in the course of its regular duties, and a sale that occurs pursuant to a contract entered into before January 1, 2023.

Pursuant to existing P.C. 27590, a violation of new P.C. 27573 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800–29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County.

P.C. 27575.1
(New)
(Ch. 140) (AB 1769)
(Effective 1/1/2023)

Prohibits gun shows at the Ventura County Fair and Event Center in Ventura County by prohibiting the sale of any firearm, firearm precursor part, or ammunition at that location. Includes a few exceptions, such as gun buyback events held by law enforcement, and the purchase of ammunition by a law enforcement agency in the course of its regular duties.

Pursuant to existing P.C. 27590, a violation of new P.C. 27575.1 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800–29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County.

P.C. 29805
(Amended)
(Ch. 76) (AB 1621)
(Effective 1/1/2023)

and

(Amended)
(Ch. 143) (AB 2239)
(Section 1.5)
(Effective 1/1/2023)

AB 1621 creates a new felony crime in subdivision (d) to prohibit possessing, owning, purchasing, or receiving a firearm within 10 years of a conviction for P.C. 29180(e) or P.C. 29180(f). Provides that subdivision (d) applies to P.C. 29180(e) and (f) convictions that occur on and after January 1, 2023.

AB 2239 further amends new subdivision (d) to add a 10-year prohibition on possessing, owning, purchasing, or receiving a firearm after a misdemeanor conviction for child endangerment (P.C. 273a), or a misdemeanor conviction for elder or dependent adult physical abuse (P.C. 368(b) or (c)), or the false imprisonment of an elder or dependent adult by means of violence, menace, fraud, or deceit (P.C. 368(f)). Provides that subdivision (d) applies to P.C. 273a and 368 convictions that occur on and after January 1, 2023.

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Provides that a violation of P.C. 29805(d) is punishable by imprisonment in the state prison or by up to one year in jail, and/or by a fine of up to $1,000.

Pursuant to existing P.C. 18, the state prison range of sentence is 16 months, two years, or three years. This is the same punishment that the other 10-year firearm prohibitions carry in P.C. 29805(a), (b), and (c).

[P.C. 29180(e) is the misdemeanor crime of a person, corporation, or firm knowingly allowing or facilitating the manufacture or assembly of a firearm by a person who is prohibited from having firearms because of a specified felony or misdemeanor conviction, probation condition, or restraining order (P.C. 29800–29875); or because of a specified violent felony conviction (P.C. 29900–29905); or because of a mental health evaluation or treatment (W&I 8100 and 8103).]

[P.C. 29180(f) is the misdemeanor crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, or aiding the manufacture of assembly of a firearm that is not imprinted with a valid state or federal serial number or identification mark.]

[*Note*: P.C. 368(f) is the non-alternative (straight) felony crime of falsely imprisoning an elder or dependent adult. It is punishable by two, three, or four years in jail pursuant to P.C. 1170(h). (When it was created in 1998, it was punishable by two, three, or four years in state prison, then was converted to a P.C. 1170(h) county jail crime by Realignment in 2011.) It cannot be charged as a misdemeanor. A defendant who has a conviction for P.C. 368(f) involving false imprisonment necessarily has a felony conviction. A person who owns or possesses a gun at any time after a P.C. 368(f) conviction should be charged with a violation of P.C. 29800(a)(1), the non-alternative felony crime of a felon in possession of a firearm. P.C. 29800(a)(1) is punishable by 16 months, two years, or three years in state prison and cannot be reduced to a misdemeanor. The early versions of the bill were worded as "a misdemeanor violation of Section … 368," which would not have included subdivision (f) because it is a non-alternative felony. Later versions listed specific subdivisions of P.C. 368, including subdivision (f).]

New Misdemeanors

P.C. 23920
(New Subdivision)
(Ch. 76) (AB 1621)
(Effective 1/1/**2024**)

In new subdivision (b), adds the new misdemeanor crime of knowingly possessing any firearm, on or after January 1, 2024, that does not have a valid state or federal serial number or mark of identification. Since no particular punishment is specified, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

This bill also amends P.C. 23925 to specify several exceptions to this new misdemeanor crime.

The exceptions:

1. The possession of a firearm that was made or assembled before December 16, 1968 and is not a handgun.

2. The possession of a firearm that has been entered, before July 1, 2018, into the P.C. 11106 centralized firearm registry, as being owned by a specific individual or entity, if the firearm has assigned to it a distinguishing number or mark of identification because the DOJ accepted entry of that firearm into the registry.

3. The possession of a firearm that is a curio or relic, or an antique firearm.

4. The possession of a firearm by a federally licensed firearms manufacturer or importer (defined in new P.C. 16517), or any other federal licensee authorized to serialize firearms.

5. The possession of a firearm by a person who, before January 1, 2024, has applied to DOJ for a unique serial number or mark of identification pursuant to P.C. 29180, and fully complies with P.C. 29180, including imprinting the serial number or mark onto the firearm within 10 days after receiving the number or mark from DOJ.

6. The possession of a firearm by a new resident who, pursuant to P.C. 29180, applies for a unique serial number or mark of identification from DOJ within 60 days of arrival in California, and fully complies with P.C. 29180, including imprinting the number or mark onto the firearm within 10 days of receiving it from DOJ.

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Provides that the good faith effort by a new resident to apply for a unique serial number or mark of identification after the 60-day period specified above, or any other person's good faith effort to apply for a serial number or mark, shall not constitute probable cause for a violation of P.C. 23920.

7. The possession of a firearm by a nonresident who is traveling with a firearm in California in accordance with the provisions of 18 U.S.C. § 926A, or who possesses or imports a firearm into California exclusively for use in an organized sport shooting event or competition. (18 U.S.C. § 926A requires a firearm to be unloaded during transportation, and requires that the ammunition and firearm not be readily accessible or directly accessible from the passenger compartment of the transporting vehicle, or be in a locked container other than the glove compartment or console.)

[This is part of a lengthy bill dealing with un-serialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 27573
(New)
(Ch. 145) (SB 915)
(Effective 1/1/2023)

Prohibits gun shows on state property by prohibiting the sale of any firearm, firearm precursor part, or ammunition on state property, in buildings that sit on state property, or on property leased, occupied, or operated by California. Includes a few exceptions, such as gun buyback events held by law enforcement, the purchase of firearms, parts, or ammunition by a law enforcement agency in the course of its regular duties, and a sale that occurs pursuant to a contract entered into before January 1, 2023.

Pursuant to existing P.C. 27590, a violation of new P.C. 27573 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800–29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated

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to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County.

P.C. 27575.1
(New)
(Ch. 140) (AB 1769)
(Effective 1/1/2023)

Prohibits gun shows at the Ventura County Fair and Event Center in Ventura County by prohibiting the sale of any firearm, firearm precursor part, or ammunition at that location. Includes a few exceptions, such as gun buyback events held by law enforcement, the purchase of ammunition by a law enforcement agency in the course of its regular duties, and a sale that occurs pursuant to a contract entered into before January 1, 2023.

Pursuant to existing P.C. 27590, a violation of new P.C. 27575.1 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800–29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County.

P.C. 29010
(New Subdivision)
(Ch. 142) (AB 2156)
(Effective 1/1/2023)

Creates in subdivision (b), the new misdemeanor crime of using a three-dimensional printer to manufacture a firearm, a frame or receiver of a firearm, or a firearm precursor part, unless the person or business holds a California firearms manufacturing license.

continued

Defines "three-dimensional printer" as a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object.

Because no misdemeanor punishment is specified, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

P.C. 29180
(New Subdivision)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Adds a new subdivision (f) to create the misdemeanor crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, facilitating, aiding, or abetting the manufacture or assembly of, a firearm that is not imprinted with a valid state or federal serial number or mark of identification. (A firearm that does not have a serial number and that is typically assembled by the user from purchased or homemade components, is commonly referred to as a "ghost gun.")

Pursuant to existing subdivision (g), if the firearm is a handgun, a violation of P.C. 29180 is punishable by up to one year in jail and/or by a fine of up to $1,000. For all other firearms, the punishment is up to six months in jail and/or by fine of up to $1,000.

Continues to provide that each firearm constitutes a distinct and separate offense.

P.C. 29185
(New)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Creates three new misdemeanor crimes relating to the use of a computer numerical control (CNC) milling machine to manufacture firearms.

(Milling is the process of cutting and drilling material, such as metal, wood, or plastic. Computer numerical control means that the milling machine is operated by a computer rather than manually by a human, which makes the cutting precise and eliminates human error.)

continued

The three new misdemeanor crimes:

1. A person, firm, or corporation that is not a federally licensed firearms manufacturer or importer, using a CNC milling machine to manufacture a firearm, a completed firearm frame, a completed firearm receiver, or a firearm precursor part. (Thus, a person making a gun or gun part at home would be prohibited from using a CNC milling machine, but could use a manually controlled milling machine.)

2. Selling, offering to sell, or transferring a CNC milling machine that has the sole or primary function of manufacturing firearms, to any person in California, other than a federally licensed firearms manufacturer or importer.

3. A person, other than a federally licensed firearms manufacturer or importer possessing, purchasing, or receiving a CNC milling machine that has the sole or primary function of manufacturing firearms.

Provides that these crimes are misdemeanors, with no particular punishment specified. Therefore, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

Sets forth some exceptions for the selling, transferring, possessing, purchasing, and receiving crimes in (2) and (3) above, such as a common carrier that transports property, and persons who, within 90 days of the effective date of this section (i.e., by September 28, 2022) sell or transfer a CNC milling machine to a federally licensed manufacturer or importer, or remove it from California, or relinquish it to a law enforcement agency.

Sets forth these exceptions for all three crimes: law enforcement agencies, forensic laboratories, and members of the military or National Guard acting within the scope of employment.

[This is part of a lengthy bill dealing with un-serialized firearms, also known as "ghost guns," and firearm precursor parts.]

Penal Code

P.C. 17
(Amended)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

Adds a new subdivision (f) to provide that when a court considers whether to reduce a felony to a misdemeanor, or a misdemeanor to an infraction, unpaid victim restitution and unpaid restitution fines cannot be grounds for denying reduction.

Note: Before this amendment, judges had discretion to grant P.C. 17 reductions, even if a defendant had not paid full victim restitution or restitution fines. Now a judge is prohibited from considering the individual circumstances of each case on the issue of restitution.

[This bill also adds similar language to expungement/dismissal statutes (P.C. 1203.4, 1203.4a, 1203.41, 1203.42), a sealing statute (P.C. 1203.45), and new P.C. 1210.6. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

P.C. 17.2
(New)
(Ch. 775) (AB 2167)
(Effective 1/1/2023)

Adds the following three statements in this new section:

1. "It is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available."

2. "The court presiding over a criminal matter shall consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation."

3. "The court shall have the discretion to determine the appropriate sentence according to relevant statutes and the sentencing rules of the Judicial Council."

This new section expresses Legislative intent, requires judges to "consider," and provides that judges have discretion, but it does not override or prevail over current sentencing laws. A number of existing statutes make a state prison sentence mandatory or provide for a minimum jail sentence, etc. Therefore, new P.C. 17.2 makes no real substantive changes. Judges already consider various alternatives when imposing sentence, when the law permits it. And as #3 above provides, judges retain discretion when imposing sentence.

continued

[According to the legislative history of this bill and uncodified Section One, the Committee on the Revision of the Penal Code recommended in its 2021 annual report that there be added to the Penal Code a statement about criminal case dispositions using the least restrictive means possible and a statement that alternatives to incarceration must be considered in every case. Uncodified Section One also contains this legislative intent language: "It is the intent of the Legislature that the court presiding over a criminal matter impose an alternative to incarceration, except where incarceration is necessary to prevent physical injury to others or the interests of justice would best be served by incarceration."

Uncodified Section also sets forth these claims:

1. California's over-reliance on incarceration has failed to improve public safety.

2. California can safely reduce the number of people behind bars by making greater use of alternatives to incarceration.

3. Victims and survivors of violent crime report greater satisfaction when a case is resolved through restorative justice than do victims and survivors whose case is resolved through the traditional criminal court process.]

[This bill barely got through the Assembly—it had only 42 yes votes, one more than the 41 votes needed to pass. In the Assembly the vote was 42 yes, 23 no, and 13 not voting. In the Senate the vote was 27 yes, 9 no, and 4 not voting.]

P.C. 136.2
(Amended)
(Ch. 87) (SB 382)
(Effective 1/1/2023)

Makes non-substantive amendments in subdivisions (e) and (h), in order to highlight that a court may issue a protective order in a human trafficking case involving the commercial exploitation of a minor (P.C. 236.1(c)). P.C. 136.2 authorizes a court to issue protective orders for crime victims and witnesses in a variety of cases, both pre- and post-conviction, including domestic violence cases, sexual assault cases, and cases that require a defendant to register as a sex offender pursuant to P.C. 290. Since P.C. 236.1(b) (sex trafficking) and P.C. 236.1(c) (commercial sexual exploitation of a minor) are already registerable offenses specified in P.C. 290(c)(1), protective orders in P.C. 236.1(b) and (c) cases were **already** available pursuant to P.C. 136.2.

continued

Makes a non-substantive amendment in subdivision (i) (which permits a court to issue a restraining order in specified cases prohibiting contact with a crime victim for up to ten years) by listing all three forms of P.C. 236.1 human trafficking—forced labor in subdivision (a), sex trafficking in subdivision (b), and commercial sex acts involving minors in subdivision (c)—as cases in which 10-year orders may be issued. P.C. 236.1(a) was **already** specifically listed, and both P.C. 236.1(b) and 236.1(c) were already included because they both require registration as a sex offender pursuant to P.C. 290, and crimes requiring registration pursuant to P.C. 290 were **already** specified in P.C. 136.2(i).

[This bill also amends P.C. 236.1. See below.]

P.C. 146e
(Amended)
(Ch. 697) (AB 2588)
(Effective 1/1/2023)

Expands the misdemeanor and felony crimes of disclosing the residence address or telephone number of a peace officer, public safety official, non-sworn police dispatcher, employee of a police department or sheriff's department, or a spouse or children residing with these persons, with the intent to obstruct justice or with the intent or threat to inflict imminent physical harm.

1. Changes "spouse or children" to "immediate family" and defines it as a spouse; parent; child; person related by consanguinity (blood) or affinity (marriage) within the second degree; anyone who regularly resides in the household; and anyone who regularly resided in the household within the past six months.

2. Changes "imminent physical harm" to "bodily harm" so that the statute would apply even if the intent to do bodily harm is not necessarily imminent.

3. Adds "elected or appointed official" to the list of persons specified.

   [*Note*: In both subdivisions (a) and (b) "elected or appointed official" should have been added twice in each subdivision rather than just once. Each subdivision specifies the list of targeted persons twice, so "elected or appointed official" should have been added in all four places.]

continued

4. Adds "nonsworn police dispatcher" to subdivision (b). Dispatchers were already specified in subdivision (a). Their previous omission from subdivision (b) appears to have been an oversight.

   Subdivision (a) continues to be a misdemeanor crime. Subdivision (b) continues to be a P.C. 1170(h) felony crime when the violation results in actual bodily injury.

P.C. 186.2
P.C. 186.8
(Amended)
(Ch. 950) (AB 1637)
(Effective 9/30/2022)

Adds fraud offenses relating to COVID-19 pandemic-related insurance programs administered by the Employment Development Department (EDD) to the list of offenses in P.C. 186.2 that are included in the definition of criminal profiteering activity, so that prosecutors may seek forfeiture of the ill-gotten gains from COVID-related unemployment insurance fraud.

P.C. 186.8 is amended to add a new subdivision (g) to provide that instead of forfeited assets going to a local government's general fund or California's general fund, forfeited proceeds will be returned to the Employment Development Department.

P.C. 186.2 and 186.8 are in the chapter entitled "California Control of Profits of Organized Crime Act."

[According to the legislative history of this bill, EDD estimates that it paid $20 billion in fraudulent COVID-19 related unemployment insurance claims, including to inmates in California prisons and jails.]

P.C. 186.22
(Amended)
(Ch. 699) (AB 333)
(Section 4)
(2021 Legislation)
(Effective 1/1/2023)

Subdivision (b)(3) is amended based on 2021 legislation (AB 933), effective January 1, 2023.

Subdivision (b)(3) reads this way, beginning January 1, 2023: "The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing." Previously subdivision (b)(3) authorized the court to select the sentence enhancement that in the court's discretion best served the interests of justice. (This was the language of subdivision (b)(3) since 2007 while the *Cunningham* fix was in place.)

continued

This revised subdivision (b)(3) is **not** a substantive change because SB 567 amended both the P.C. 1170 and 1170.1 sentencing statutes in 2021, effective January 1, 2022 to prohibit a court from imposing more than the middle term for crimes and enhancements, 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.

Background

For a number of years, there were two versions of P.C. 186.22: A version in effect that fixed the *Cunningham* problem (see more on this below), and a version that would go into effect without a *Cunningham* fix, if the current version was not extended. The other sections that also had two versions in the Penal Code were P.C. 186.33, 1170, 1170.1, 1170.3, 12021.5, 12022.2, and 12022.4.

The *Cunningham* Fix

Senate Bill 40, effective March 30, 2007, was the legislative response to *Cunningham v. California* (2007) 549 U.S. 270, which held 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 to impose the high term. 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. This fix meant that aggravating factors would not have to be tried to a jury. From March 2007 through 2016, various bills were passed to extend the sunset date on the *Cunningham* fix. The last bill was SB 1016 in 2016, which extended the sunset date on the above Penal Code sections from January 1, 2017 to January 1, 2022. In 2021, the versions of these sections that contained the *Cunningham* fix were allowed to sunset, except for P.C. 186.22. AB 333 (2021 Legislation) amended both versions of P.C. 186.22 to change the way gang cases are proved, keeping the version with the *Cunningham* fix in effect for 2022, with the version that did not have the *Cunningham* fix being operative on January 1, 2023.

P.C. 192
(Amended)
(Ch. 626) (SB 1472)
(Effective 1/1/2023)

Ryan's Law.

Lists three circumstances that may, based on the totality of the circumstances, constitute gross negligence for purposes of manslaughter:

1. Participating in a sideshow pursuant to V.C. 23109(i)(2)(A) (which defines "sideshow" as an event in which two or more persons block or impede traffic on a highway or in an offstreet parking facility, for the purpose of performing motor vehicle stunts, speed contests, exhibitions of speed, or reckless driving, for spectators); or

2. Speeding over 100 miles per hour; or

3. Exhibition of speed pursuant to V.C. 23109(a).

[This is a drafting error. V.C. 23109**(a)** applies to speed contests and V.C. 23109**(c)** applies to the exhibition of speed. Existing P.C. 7.5 provides that if there is a conflict between a code section and a description, the code section (in this case, V.C. 23109(a) speed contests) would prevail over the description ("exhibition of speed"), unless it is clear from the context that the descriptive language is intended to narrow the application of the code section. Despite the drafting error, both speed contests and exhibition of speed may constitute gross negligence, depending on the facts of the case. SB 1472 simply lists three acts that may constitute gross negligence. It does not exclude any acts.]

P.C. 236.1
(Amended)
(Ch. 87) (SB 382)
(Effective 1/1/2023)

Adds a new subdivision (j) to require the prosecutor in a human trafficking case to "consider whether to seek protective orders pursuant to Section 136.2."

P.C. 236.1 is the crime of human trafficking—forced labor in subdivision (a), sex trafficking in subdivision (b), and commercial sex acts involving minors in subdivision (c). P.C. 136.2 authorizes a court to issue protective orders for crime victims and witnesses in a variety of cases, both pre- and post-conviction, including domestic violence cases, sexual assault cases, and cases that require a defendant to register as a sex offender pursuant to P.C. 290. Since P.C. 236.1(b) (sex trafficking) and P.C. 236.1(c) (commercial sexual exploitation of a minor) are already registerable

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offenses specified in P.C. 290(c)(1), protective orders in P.C. 236.1(b) and (c) cases are available pursuant to P.C. 136.2. P.C. 236.1(a) is specifically listed in P.C. 136.2(i)(1).

[This bill also amends P.C. 136.2. See above.]

[One of the legislative analyses for this bill claims that district attorneys do not "routinely seek" and judges do not "routinely order" restraining orders in criminal cases.]

[Proposition 35 was approved by California voters in November 2012. Among other things, it amended P.C. 236.1 to increase the punishment for human trafficking and added P.C. 236.1(b) and (c) as registerable offenses in P.C. 290(c). It does not require a supermajority of the Legislature or a vote by the electorate in order to amend it. Section 15 of Proposition 35 provides that it may be amended by a majority vote of each house of the Legislature. This bill was passed unanimously, with zero "no" votes.]

P.C. 236.14
P.C. 236.15
(Amended)
(Ch. 776) (AB 2169)
(Effective 1/1/2023)

Makes the same changes to these sections that provide for vacatur relief for victims of human trafficking (P.C. 236.14) and victims of intimate partner violence or sexual violence (P.C. 236.15).

1. Continues to require that a petitioner establish that the arrest or conviction for a non-violent offense (e.g., P.C. 647(b) prostitution) was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence, in order to be eligible for vacatur relief. Adds that upon this showing, a court is required to find that the petitioner lacked the requisite intent to commit the offense and is required to vacate the conviction as invalid due to legal defect. (The purpose of this amendment is to protect petitioners from deportation. According to the legislative history of this bill, a conviction vacated on the basis of legal defect will protect a non-citizen petitioner from adverse immigration consequences whereas vacatur relief based on rehabilitation will not. Therefore this bill adds specific legal defect language.)

2. Eliminates the requirement that petitioners show they are engaged in a good faith effort to distance themselves from the human trafficking scheme (P.C. 236.14) or from the perpetrator of the harm (P.C. 236.15).

P.C. 243
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes technical, non-substantive amendments to the misdemeanor domestic violence crime in subdivision (e) to change "battered women's shelter" references to "domestic violence shelter-based program," thereby making the reference gender neutral.

[When probation is granted, a court is permitted to order a defendant to make payments to a shelter.]

P.C. 243.4
(Amended)
(Ch. 48) (SB 189)
(Effective 6/30/2022)

Makes a technical, non-substantive amendment to this crime of sexual battery, by changing the name of the Department of Fair Employment and Housing to the Civil Rights Department, in order to conform to amendments this bill makes to Gov't C. 12901, 12903, 12907, and 12925 in order to change the name of that department.

P.C. 243.4(e)(1) (misdemeanor sexual battery) continues to provide that any amount of a fine above $2,000 that is collected from a defendant shall be distributed to the Civil Rights Department (formerly the Department of Fair Employment and Housing) in order to enforce the California Fair Employment and Housing Act.

P.C. 273.5
P.C. 273.6
P.C. 273.65
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes technical, non-substantive amendments to these domestic violence code sections to change "battered women's shelter" references to "domestic violence shelter-based program," thereby making the reference gender neutral.

[In each of these three sections, when probation is granted, a court is permitted to order a defendant to make payments to a shelter.]

P.C. 290.008
(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Adds a new subdivision (h) to define what a discharged person is for purposes of the requirement to register as a sex offender, because the Division of Juvenile Justice (DJJ) is closing by June 30, 2023. (DJJ houses juvenile offenders and is a part of CDCR.)

Continues to require that a person discharged or paroled from CDCR after having been adjudicated a ward of the juvenile court pursuant to W&I 602 because of the commission or attempted commission of a specified sex

continued

offense, must register as a sex offender. Continues to provide that an offender discharged or paroled from a facility in another state that is the equivalent of DJJ, after having been committed for a specified sex offense, is required to register as a sex offender. Continues to require Tier One offenders to register for a minimum of five years and Tier Two offenders to register for a minimum of 10 years.

New subdivision (h) provides that a discharged person includes all of the following:

1. A ward in the custody of DJJ on or after July 1, 2022, who, prior to discharge, is returned by DJJ or by the chief probation officer of the county to the court of jurisdiction for alternative disposition, because of the closure of DJJ. Requires DJJ to inform the ward of the duty to register before the ward is returned to the court.

2. A patient described in new W&I 1732.10 (i.e., an offender receiving treatment at a state hospital).

   [Existing W&I 1756 authorizes DJJ to place persons with mental health disorders or developmental disabilities in state hospitals for treatment.]

   Requires DJJ to inform the patient of the duty to register immediately prior to the closure of DJJ.

3. A person described in new W&I 1732.9 (i.e., an offender subject to the custody, control, and discipline of DJJ who has been sentenced to state prison for a felony committed while in the custody of DJJ).

   Requires CDCR to inform the offender of the duty to register immediately prior to the offender being returned to the court of jurisdiction.

Adds a new subdivision (i) to provide that "The court of jurisdiction shall establish the point at which the ward described in subdivision (h) is required to register and notify DOJ of its decision." (A registration starting point aids in the calculation of the 5- and 10-year minimum registration periods for juvenile offenders.)

[This bill also amends P.C. 457.1 to make the same changes for arson registration for juvenile offenders.]

P.C. 372.5
(New)
(Ch. 487) (AB 2195)
(Effective 1/1/2023)

Creates a new public nuisance penalty statute that the prosecution may offer a defendant as an alternative charge to drug crimes, for the purpose of avoiding the immigration consequences of a drug conviction.

New P.C. 372.5 provides that notwithstanding existing P.C. 372 (the misdemeanor crime of maintaining or committing a public nuisance), if a defendant is sentenced for a violation of existing P.C. 370 (which defines what a public nuisance is) based on a negotiated disposition between the prosecution and a defendant that includes the dismissal of one or more charges for unlawfully cultivating, manufacturing, transporting, giving away, or selling a drug, or offering to transport, give away, or sell a drug, or unlawfully using a drug, or unlawfully possessing a drug or drug paraphernalia, the public nuisance is punishable as follows:

1. Subdivision (a): If one or more infraction drug charges is dismissed, by a fine of up to $250.

2. Subdivision (b): If one or more misdemeanor drug charges is dismissed, by up to one year in jail and/or by a fine of up to $1,000; or, as an infraction punishable by a fine of up to $250. (Subdivision (b) is a woblette, meaning that it may be punished as a misdemeanor or as an infraction.)

3. Subdivision (c): If one or more felony drug charges is dismissed, by 16 months, two years, or three years in jail pursuant to P.C. 1170(h), or, by up to one year in jail. (Subdivision (c) is a wobbler, meaning that it may be punished as a felony or as a misdemeanor.)

Existing P.C. 370 provides that a public nuisance is anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; or that unlawfully obstructs the free passage or use of any navigable lake, river, bay, stream, canal, basin, public park, square, street, or highway.

Note: New P.C. 372.5 does not address what the punishment is if the dismissed drug charges involve both felony and misdemeanor drug crimes. Presumably the higher penalty would apply.

continued

Note: Prosecutors already have the discretion to offer an alternative to drug charges (or any type of charge for that matter), and, existing P.C. 1016.3(b) already requires prosecutors to "consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution." But new P.C. 372.5 makes it easy to find an alternative charge with an equivalent punishment.

P.C. 374.3
(Amended)
(Ch. 784) (AB 2374)
(Effective 1/1/2023)

Increases the maximum fines for illegal dumping in commercial quantities, and requires the defendant to remove, or pay the cost of removing, the waste matter. Expands the authority of the court in non-commercial quantity dumping cases to make cleanup orders.

Creates new paragraphs in subdivision (h) (illegal dumping in commercial quantities) to do the following:

1. Increases the maximum fine for a defendant who is the owner or operator of a business that employs more than 10 full-time employees. The fine for a first conviction of an owner/operator is $1,000 to $5,000. The fine for a second conviction is $3,000 to $10,000. And the fine for a third or subsequent conviction is $6,000 to $20,000.

2. Requires the court to order the defendant remove, or pay the cost of removing, any waste matter the defendant dumped on public or private property.

3. Requires the court, when the defendant holds a license or permit to conduct business that is substantially related to the illegal dumping, to notify the applicable licensing or permitting entity about the conviction.

4. Requires the licensing or permitting entity to post the conviction on its Internet website.

Illegal dumping in commercial quantities remains a misdemeanor crime punishable by up to six months in jail and by a fine. The fine remains mandatory.

Expands the authority of the court in non-commercial quantity dumping cases by eliminating references to conditions of probation, thereby authorizing a court to order a defendant to remove, or pay the costs of removing, the

continued

waste matter the defendant dumped, regardless of whether probation is granted.

Expands the court's authority in all cases to order community service by eliminating references to conditions of probation, thereby authorizing a court to order the defendant to perform community service by picking up waste matter for at least 12 hours, regardless of whether probation is granted.

Eliminates the provision in subdivision (j) providing that in an unusual case where the interest of justice would be served, a court may waive or reduce a fine. Instead, amended subdivision (j) provides that in setting the amount of a fine, the court must consider the defendant's ability to pay, and these four circumstances:

1. The defendant's present financial position;
2. The defendant's reasonably discernible financial position for the next year;
3. The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing; and
4 Any other factors that may bear upon the defendant's financial capability to pay the fine.

P.C. 422.92
(Amended)
(Ch. 48) (SB 189)
(Effective 6/30/2022)

Makes a technical, non-substantive amendment to this section that requires every state and local law enforcement agency to make available a brochure on hate crimes to crime victims and the public, by changing the name of the Department of Fair Employment and Housing to the Civil Rights Department, in order to conform to amendments this bill makes to Gov't C. 12901, 12903, 12907, and 12925 to change the name of that department.

This section continues to require the Civil Rights Department (formerly the Department of Fair Employment and Housing) to provide existing brochures to local law enforcement agencies upon request, for reproduction and distribution.

P.C. 422.94
(New)
(Ch. 853) (AB 557)
(Effective 1/1/2023)

Creates a Hate Crime Vertical Prosecution Pilot Grant Program (HCVP) to be administered by DOJ, if there is an appropriation of funds.

continued

Provides that grants may go to district attorneys, city attorneys, or other governmental entities responsible for prosecuting crime. Defines "vertical prosecution" as having the same individual prosecutor assigned to a case from the initial criminal investigation through sentencing.

Provides that one-time HCVP grants are to be made on a competitive basis in a manner determined by DOJ. Requires grant recipients, by July 1, 2028, to submit a report to DOJ that includes any relevant data requested by DOJ.

P.C. 457.1
(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Adds a new subdivision (m) to define what a discharged person is for purposes of the requirement to register as a juvenile arson offender, because the Division of Juvenile Justice (DJJ) is closing by June 30, 2023. (DJJ houses juvenile offenders and is a part of CDCR.)

Continues to require that a person discharged or paroled from DJJ for the offense of arson or attempted arson after having been adjudicated a ward of the juvenile court must register as an arson offender until age 25. Provisions relating to arson registration for offenders convicted in adult court remain the same—lifetime registration for convictions occurring on and after November 30, 1994.

New subdivision (m) provides that a discharged person includes all of the following:

1. A ward in the custody of DJJ on or after July 1, 2022, who, prior to discharge, is returned by DJJ or by the chief probation officer of the county to the court of jurisdiction for alternative disposition, because of the closure of DJJ. Requires DJJ to inform the ward of the duty to register before the ward is returned to the court.

2. A patient described in new W&I 1732.10 (i.e., an offender receiving treatment at a state hospital).

   [Existing W&I 1756 authorizes DJJ to place persons with mental health disorders or developmental disabilities in state hospitals for treatment.]

   Requires DJJ to inform the patient of the duty to register immediately prior to the closure of DJJ.

continued

3. A person described in new W&I 1732.9 (i.e., an offender subject to the custody, control, and discipline of DJJ who has been sentenced to state prison for a felony committed while in the custody of DJJ). Requires CDCR to inform the offender of the duty to register immediately prior to the offender being returned to the court of jurisdiction.

Adds a new subdivision (n) to provide that "The court of jurisdiction shall establish the point at which the ward described in subdivision (m) is required to register and notify the Department of Justice of its decision."

[This bill also amends P.C. 290.008 to make the same changes for sex offender registration for juveniles.]

P.C. 487
(Amended)
(Ch. 22) (AB 2356)
(Effective 1/1/2023)

Amends P.C. 487 (grand theft) to add a new subdivision (e) in order to codify the aggregation of value principles in *People v. Bailey* (1961) 55 Cal.2d 514, which permits the value of stolen items in multiple charges to be added together so that a felony may be charged instead of several misdemeanor crimes, if the crimes were committed pursuant to one intent and one plan.

New subdivision (e) provides as follows: "If the value of the money, labor, real property, or personal property taken exceeds nine hundred fifty dollars ($950) over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan."

Uncodified Section Two of the bill provides that this amendment is declaratory of existing law in *People v. Bailey* (1961) 55 Cal.2d 514. In *Bailey,* the defendant made a single fraudulent representation about her household situation that caused her to receive a number of welfare payments. Each payment fell below the felony threshold, but payments were permitted to be aggregated in order to charge felony grand theft, because the evidence established that there was only one intention, one general impulse, and one plan. (*Id.* at 519.)

P.C. 487e
P.C. 487f
P.C. 491
(Amended)
(Ch. 546) (AB 1290)
(Effective 1/1/2023)

Clarifies that a companion animal is personal property for the purposes of theft, and provides that the taking of a companion animal may be prosecuted as petty theft pursuant to P.C. 487f or as grand theft pursuant to P.C. 487e. Previously both P.C. 487e and 487f specified only that the taking of a dog constituted petty theft or grand theft, and P.C. 491 provided only that a dog is personal property.

This bill updates these statutes and clarifies that the taking of any type of companion animal may be prosecuted as theft under P.C. 487e or 487f. But prosecution for the theft of a companion animal has always been permitted pursuant to more generic theft statutes such as P.C. 484, 487, and 488.

In *People v. Sadowski* (1984) 155 Cal.App.3d 332, the court upheld a P.C. 487 conviction for the grand theft of a cat even though "cat" is not specified in P.C. 487, finding that P.C. 484 provides adequate notice of the elements of the crime of theft (including taking the "personal property of another"), that P.C. 487 provides adequate notice that the taking of property of a particular value is grand theft, and that P.C. 487 applies to thefts of all property, animals or otherwise, not specified elsewhere.

Defines "companion animal" as an animal, including but not limited to, a dog or cat, that a person keeps and provides care for as a household pet or otherwise for the purpose of companionship, emotional support, service, or protection. Also provides that a companion animal does not include a feral animal.

P.C. 538d
P.C. 538e
P.C. 538f
P.C. 538g
P.C. 538h
(Amended)
(Ch. 954) (AB 1899)
(Effective 1/1/2023)

Expands these fraudulent impersonation misdemeanor crimes to prohibit willfully and credibly impersonating a specified type of person through or on an Internet website, or by other electronic means, for purposes of defrauding another.

This expansion applies to the false impersonation of a peace officer (P.C. 538d), a firefighter (P.C. 538e), an employee of a public utility (P.C. 538f), a state, county, or city officer or employee (P.C. 538g), and to an officer or member of a government affiliated search and rescue team (P.C. 538h).

[The above crimes do not require that the person impersonated be a real or actual person, unlike the

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misdemeanor crime in existing P.C. 528.5. P.C. 528.5 continues to prohibit credibly impersonating another actual person through or on an Internet website or by other electronic means, for purposes of harming, intimidating, threatening, or defrauding another person.]

P.C. 602
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to subdivision (w), the trespass crime of refusing or failing to leave a battered women's shelter after being asked to leave by a managing authority of the shelter, by changing "battered women's shelter" and "battered women" references to "domestic violence shelter-based program" and "victim of domestic violence," thereby making the references gender neutral.

P.C. 626
P.C. 626.2
P.C. 626.4
P.C. 626.6
(Amended)
(Ch. 134) (SB 748)
(Effective 7/19/2022)

Adds "independent institutions of higher education" to those entities (public universities, community colleges, secondary schools and below) that these school trespass laws apply to. Defines "independent institution of higher education" as a nonpublic, nonprofit higher education institution, i.e., a private, nonprofit college or university such as Stanford.

Eliminates the mandatory minimum jail sentences for defendants who commit violations of P.C. 626.2, 626.4, and 626.6 and have one or more specified priors. The mandatory minimum jail sentences were 10 days if the defendant had one specified prior, and 90 days if the defendant had two or more specified priors.

Makes all violations of P.C. 626.2, 626.4, and 626.6, including repeat violations, punishable as a first violation: up to six months in jail and/or a fine of up to $500.

[P.C. 626.2 is the crime of trespass after being dismissed or suspended from a school. P.C. 626.4 is the crime of trespass after school officials have withdrawn consent for the person to be on campus. P.C. 626.6 is the crime of failing to leave a campus, or re-entering within seven days, after being directed to leave by a school official.]

P.C. 629.51
P.C. 629.52
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Amends wiretap statutes to prohibit a magistrate from authorizing the interception of wire or electronic communications for the purpose of investigating or recovering evidence of a "prohibited violation." Defines "prohibited violation" as providing, facilitating, obtaining, or intending or attempting to provide, facilitate, or obtain, an abortion that is lawful under California law.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 638.50, 638.52, 1269b, 1524, 1524.2, and 1551, and adds P.C. 1546.5 and 13778.2. See below.]

P.C. 631
P.C. 632.7
(Amended)
(Ch. 27) (SB 1272)
(Effective 1/1/2023)

Updates P.C. 631 (wiretapping) and 632.7 (eavesdropping) to specifically add telephone companies to those entities (public utilities) to which the prohibitions on wiretapping and eavesdropping do **not** apply. (Wiretapping and eavesdropping violations may be punished as felonies or misdemeanors.)

Defines "telephone company" with a cross-reference to existing P.C. 638(c)(3): A telephone corporation as defined in Pub. Util. C. 234 or any other person providing residential or commercial telephone service to a subscriber utilizing specified technologies or methods such as a cordless telephone, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, etc.

According to the legislative history of this bill, its purpose is to ensure that firms that provide telephonic communication services by modern means can continue to provide their services and facilities to the public without fear of liability for wiretapping and eavesdropping. The current technologies did not exist at the time the exemption for public utilities was included in P.C. 631 and 632.7.

P.C. 638.50
P.C. 638.52
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Amends these pen register and trap and trace device statutes to prohibit a magistrate from authorizing the installation and use of a pen register or a trap and trace device for the purpose of investigating or recovering evidence of a "prohibited violation." Defines "prohibited violation" as providing, facilitating, obtaining, or intending or attempting

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to provide, facilitate, or obtain, an abortion that is lawful under California law.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 1269b, 1524, 1524.2, and 1551, and adds P.C. 1546.5 and 13778.2. See above and below.]

P.C. 647
(Amended)
(Ch. 882) (SB 1081)
(Effective 1/1/2023)

Expands the misdemeanor crime of intentionally distributing an intimate image of an identifiable person ("revenge porn," P.C. 647(j)(4)) by defining "distribute" as including "exhibiting in public or giving possession." This would include actions such as displaying the image in public on the side of a vehicle and driving around town, or putting it on a billboard.

Adds a definition for "identifiable," by cross-referencing the definition already in P.C. 647((j)(2) and 647(j)(3), which is based on *People v. Johnson* (2015) 234 Cal.App.4th 1432. "Identifiable" means capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim; does not require that the victim's identity actually be established.

Adds another exception to this crime: the distribution is related to a matter of public concern or public interest. Provides that distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Adds "causes to be distributed" to the beginning of P.C. 647(j)(4) ("A person who intentionally distributes **or causes to be distributed** the image of the intimate body part … of another identifiable person …."). This addition is not really substantive, since P.C. 647(j)(4)(B) already provided that the act of intentional distribution included arranging, specifically requesting, or intentionally causing another person to distribute the image. This bill separates the definition of intentional distribution from the definition of intentionally causing distribution. Intentional distribution is personal distribution. Intentionally causing distribution is arranging, specifically requesting, or intentionally causing another person to distribute the image.

P.C. 647.3
(Amended)
(Ch. 86) (SB 357)
(Effective 7/1/2022)

Adds the word "former" before a cross-reference to P.C. 653.22 (the crime of loitering with the intent to commit prostitution), in conformity with this bill's repeal of P.C. 653.22. See P.C. 653.22, below, for more information.

[P.C. 647.3 prohibits the arrest of a person for a misdemeanor drug crime, P.C. 372 misdemeanor nuisance, P.C. 647(a) lewd act in public, P.C. 647(b) prostitution, or former P.C. 653.22 if that person reports being a victim or, or witness to, a serious felony or other specified crime and the offense for which arrest is prohibited is related to the crime reported.]

P.C. 653.20
P.C. 653.22
(Repealed)
P.C. 653.23
(Amended)
P.C. 653.29
(New)
(Ch. 86) (SB 357)
(Effective 1/1/2023)

Repeals the misdemeanor crime of loitering with the intent to commit prostitution (P.C. 653.22) and repeals P.C. 653.20, which defined the terms associated with that crime.

Amends P.C. 653.23 to eliminate all references to 653.22. P.C. 653.23 continues to set forth two misdemeanor crimes involving P.C. 647(b) prostitution:

1. Directing, supervising, recruiting, or aiding another person in the commission of P.C. 647(b).
2. Collecting or receiving all or part of the proceeds earned from an act of prostitution committed by another person in violation of P.C. 647(b).

Continues to provide that nothing in P.C. 653.23 precludes prosecution for a violation of P.C. 266h (pimping), 266i (pandering), or any other offense, or for a violation of P.C. 653.23 in conjunction with another offense.

Creates new P.C. 653.29 to permit a defendant who is currently serving a sentence for P.C. 653.22, whether by trial or plea, to petition for recall and resentencing, or dismissal, and sealing of the conviction. Permits a defendant who has completed a sentence for P.C. 653.22 to file an application to have the conviction dismissed and sealed as legally invalid. Provides that no hearing is necessary in a case where the defendant has finished serving the P.C. 653.22 sentence, unless the defendant requests a hearing.

Requires the Judicial Council to develop the necessary forms for these petitions and applications.

continued

[The legislative history of this bill contains a claim by the bill's author that P.C. 653.22 "results in the legal harassment of LGTBQ+, Black, and Brown communities for simply existing and looking like a 'sex worker' to law enforcement." The Peace Officer's Research Association of California (PORAC) opposed the bill and pointed out that the elimination of P.C. 653.22 will hinder law enforcement efforts to identify and prosecute human traffickers.]

[This bill also amends Evid. C. 782.1, P.C. 647.3 and 1203.47, Pub. Util. C. 99171, and W&I 18259 and 18259.3 to add the word "former" before "Section 653.22 of the Penal Code" or to eliminate a cross-reference to P.C. 653.22 altogether.]

P.C. 679.027
(New)
(Ch. 771) (AB 160)
(Effective 7/1/2024 if specified contingencies are met)

Beginning July 1, 2024, **if** specified funding requirements are met, requires every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act, at the time of initial contact with a crime victim, during follow up investigation, or as soon thereafter as deemed appropriate by investigating officers and prosecuting attorneys, to "inform" each victim or the victim's next of kin, of the rights they may have under "applicable law relating to the victimization," including rights related to housing, employment, compensation, and immigration relief.

Also requires law enforcement and prosecuting agencies to provide or make available to each crime victim a "Victim Protections and Resources" card, which the Attorney General is required to design and make available by June 1, 2025. Permits the information for this new card to be included in the Marsy's Rights card required by existing P.C. 679.026.

Requires that this new card contain information in lay terms about victim rights and resources, including, but not limited to, the following:

1. Labor C. 230 and 230.1, which prohibit an employer from firing, or discriminating against, an employee for taking time off to appear in court as a witness, to obtain a restraining order, to seek medical attention for injuries, to obtain services from a domestic violence shelter, to obtain psychological counseling related to a crime, etc.

2. Civil C. 1946.7, which permits a tenant to terminate a tenancy if the tenant, a household member, or an

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immediate family member is the victim of a specified crime.

3. C.C.P. 1161.3, which prohibits a landlord from terminating a tenancy or failing to renew a tenancy because of an act of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse against a tenant or member of the tenant's household, where the perpetrator is not a tenant of the same dwelling unit as the victim-tenant or the victim-household member. [*Note*: The bill contains a drafting error, referring to section 1161.3 as being in the Civil Code, when it is actually in the Code of Civil Procedure. There is no section 1161.3 in the Civil Code.]

4. Information about federal immigration relief available to specified crime victims.

5. Information about eligibility for reimbursement for specified expenses from the California Victim Compensation Board, and how to apply. (Gov't C. 13950–13966.)

6. Information about the Secretary of State's address confidentiality program for victims of domestic violence, sexual assault, stalking, human trafficking, and elder/dependent adult abuse (Gov't C. 6205–6210.)

7. Information about eligibility for filing a restraining or protective order.

8. Contact information for the Victims' Legal Resource Center (existing P.C. 13897–13897.3), which is a statewide toll-free information service established to provide information and educational materials about the legal rights of victims.

9. A list of trauma recovery centers (funded pursuant to existing Gov't C. 13963.1) and their contact information.

P.C. 679.06
(New)
(Ch. 941) (AB 547)
(Effective 1/1/2023)

Requires county probation departments to notify domestic violence victims and stalking victims of the perpetrator's current community of residence or proposed community of residence upon release, when the perpetrator is placed on probation or is being released on probation, under the

continued

supervision of the county probation department. (This limits required notification to victims whose perpetrators are placed on formal probation, as opposed to "informal" or "court" probation where there is no supervision by a probation officer.)

Provides that notification is required only if the victim has requested notification and has provided the probation department with a current address.

Requires **district attorneys** to advise domestic violence and stalking victims whose perpetrators are placed on probation, about the right to request and receive notice pursuant to this new section.

[Existing P.C. 646.92 continues to require that notice be provided to victims when a person convicted of P.C. 646.9 stalking or of a felony domestic violence crime is released from county jail or a state prison, or escapes.]

P.C. 679.09
(New)
(Ch. 227) (SB 1268)
(Effective 1/1/2023)

Requires the law enforcement agency investigating the death of a minor to provide the minor victim's parent or guardian with the following information:

1. Contact information for each law enforcement agency involved in the investigation, including the primary contact;
2. The case number of the investigation;
3. A list of the personal effects found with the minor and the contact information necessary to permit an immediate family member to collect the effects; and
4. Information about the status of the investigation, at the discretion of the law enforcement agency.

Provides that if a parent or guardian cannot be located, the above information must be provided, upon request, to the victim's immediate family. Defines "immediate family" as a spouse, parent, guardian, grandparent, aunt, uncle, brother, sister, child, or grandchild.

Provides that a law enforcement agency is not required to provide any information that would jeopardize an investigation or that would allow a person to interfere with the investigation.

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Authorizes a law enforcement agency to require any family member receiving information to confirm their identity "through a certified declaration." Provides that knowingly or willingly making a false certification for such a declaration is an infraction crime.

P.C. 679.10
(Amended)
(Ch. 48) (SB 189)
(Effective 6/30/2022)

Makes a technical, non-substantive amendment to this section that sets forth U-Visa procedures for certifying the helpfulness or cooperation of a non-citizen crime victim in a criminal case so that the victim can obtain a visa to remain in the United States, by changing the name of the Department of Fair Employment and Housing to the Civil Rights Department, in order to conform to amendments this bill makes to Gov't C. 12901, 12903, 12907, and 12925 that change the name of that department.

This section continues to specify that the Civil Rights Department (formerly the Department of Fair Employment and Housing) is one of the entities that may certify victim helpfulness.

P.C. 679.12
(New)
(Ch. 994) (SB 1228)
(Effective 1/1/2023)

Adds protections for the handling of DNA reference samples from crime victims and from individuals who voluntarily provide samples for exclusion purposes, as well as to any profiles developed from those samples, in order to prevent, for example, DNA from these persons being run against databases of unsolved crimes.

The Protections

1. Limits a law enforcement agency and its agents to using these DNA samples or profiles only for purposes directly related to the incident being investigated.

2. Prohibits a law enforcement agency or agent from comparing these sample or profiles with DNA samples or profiles that do not relate to the incident being investigated.

3. Prohibits a law enforcement agency or agent from including these DNA profiles in any database that allows the samples to be compared or matched with profiles derived from DNA evidence obtained from crime scenes.

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4. Requires any part of a DNA sample that remains after testing to be securely stored.

5. Prohibits a law enforcement agency from providing these samples or profiles to a person or entity other than the law enforcement agency that provided them, except that portions of remaining DNA samples may be provided to a defendant when authorized by a court order.

6. Requires that a DNA profile voluntarily provided for exclusion purposes be expunged from all public and private databases if the person has no past or present offense or pending charge that qualifies the person for inclusion in California's DNA and Forensic Identification Database and Databank Program (P.C. 295).

Crime Labs
Permits crime laboratories to collect, retain, and use for comparison purposes in multiple cases, specified DNA profiles for elimination purposes, where there is written consent. Examples are DNA profiles from persons who produce supplies used in laboratory testing, and from law enforcement and laboratory staff who handle DNA evidence during collection.

Definitions
Provides that a sample is "voluntarily provided for the purpose of exclusion" if law enforcement does not consider the person to be a suspect and has requested a voluntary DNA sample in order to exclude that person's DNA profile from consideration in the current investigation.

Provides that an "agent" of a law enforcement agency includes a person or entity that the agency provides with access to a DNA sample collected directly from a victim or witness, or to any profile developed from that sample. Provides that an "agent" includes, but is not limited to, a public or private DNA testing facility.

Non-Victim DNA
Provides that this new section does **not** apply to biological material from a victim that is not the victim's own, such as DNA transferred from an assailant.

[This bill also amends P.C. 680 (The Sexual Assault Victims' DNA Bill of Rights) to provide that DNA samples collected

continued

from sexual assault victims and from individuals who voluntarily provided samples for exclusion purposes, shall be protected as provided in P.C. 679.12.]

P.C. 680
(Amended)
(Ch. 709) (SB 916)
(Section 1)
(Effective 1/1/2023)

SB 916 amends the Sexual Assault Victims' DNA Bill of Rights to add that sexual assault victims have the right to access DOJ's SAFE-T database portal, consistent with existing P.C. 680.3(e), for information about their own forensic kit and the status of the kit.

and

(Amended)
(Ch. 994) (SB 1228)
(Section 2.5)
(Effective 1/1/2023)

(Existing P.C. 680.3(e) requires that the SAFE-T database, on or before July 1, 2022, allow sexual assault victims to track and receive updates privately, securely, and electronically about the status and location of their sexual assault evidence kits.)

SB 1228 further amends P.C. 680 to add that DNA reference samples collected from sexual assault victims and from individuals who provided them voluntarily for purposes of exclusion, shall be protected as provided in new P.C. 679.12. [See above for information about P.C. 679.12.]

P.C. 680.2
(Amended)
(Ch. 709) (SB 916)
(Effective 1/1/2023)

Adds additional information that is required to be on the sexual assault victim rights card that law enforcement and medical providers are required to give to sexual assault victims: A clear statement that under C.C.P. 1219, a court may not imprison, confine, or place in custody a victim of sexual assault or domestic violence for contempt, if the contempt consists of refusing to testify concerning the crime.

P.C. 741
(New)
(Ch. 806) (AB 2778)
(Effective 1/1/2023)

Beginning January 1, 2024, requires DOJ to develop and publish guidelines for Race-Blind Charging, whereby the initial review of a case for charging is based on information and reports from which the race of a suspect, victim, or witness has been removed or redacted. Requires prosecutors to develop a redaction and review process.

Prosecution Protocols
Beginning January 1, 2025, requires prosecution agencies (defined as agencies that prosecute criminal violations of the law as felonies or misdemeanors) to independently develop

continued

a redaction and review process, using the general guidelines in this new section:

1. An initial charging evaluation is done by a prosecutor who does not have knowledge of the redactions and who determines only whether the case should or should not be charged, not the individual charges that should be filed.

2. A second, complete review is done, using unredacted reports, in which individual charges and enhancements are considered and charged.

Documenting Reasons For Charging Decisions or For Not Using Race-Blind Charging
Requires that each of the following be documented as part of the case record:

1. The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
2. The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
3. The explanation for the charging decision change.

Provides that the documented change in the charging decision as well as the explanation, must be disclosed upon request, after sentencing in the case or dismissal of all charges, subject to P.C. 1054.6 (work product materials or information not required to be disclosed) or any other applicable law.

Requires a prosecuting agency that is not able to put a case through a race-blind initial charging evaluation, to document the reason. Provides that this documentation shall be made available by the agency "upon request."

Data Collection
Requires the county to collect data on the race-blind initial charging evaluation and make that data available for research purposes.

Exclusion of Crimes From Race-Blind Charging is Permitted
Permits each prosecuting agency to exclude certain classes of crime or factual circumstances from a race-blind initial

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charging evaluation, and requires that the agency's list of exclusions be made available upon request to DOJ and the public.

Specifically provides that the following crimes may be excluded from a race-blind initial charging evaluation process: homicides; hate crimes; charges arising from a physical confrontation where that confrontation is captured on video; domestic violence and sex crimes; gang crimes; cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants; cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of P.C. 368 (elder fraud) and P.C. 503 (embezzlement), and other crimes sounding in fraud consisting of voluminous documentation; cases involving public integrity, including, but not limited to, conflict of interest crimes under Gov't C. 1090 (prohibits legislators and state, county, district, and city officers and employees from having a financial interest in any contract made by them in their official capacity); cases in which the prosecution agency itself investigated the alleged crime or participated in the pre-charging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation; cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

Funding
Uncodified Section 3 of the bill provides that if the Commission on State Mandates determines that this new section contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Gov't C. 17500–17630. (This is standard language that is added to a number of bills every year.)

P.C. 745
(Amended)
(Ch. 739) (AB 256)
(Effective 1/1/2023)

Makes a number of changes to the Racial Justice Act of 2020, which prohibits the state from seeking or obtaining a criminal conviction, or imposing a sentence, on the basis of race, ethnicity, or national origin, and provides that a violation is established if the defendant proves specified

continued

bias, or disparity in charging or sentencing based on race, by a preponderance of the evidence. Also adds provisions that phase in retroactivity. Previously P.C. 745 applied only prospectively to cases in which judgment was not entered before January 1, 2021.

Retroactivity

1. Provides that P.C. 745 applies to all cases in which judgment is not final.

2. Beginning January 1, 2023, P.C. 745 applies to cases where the defendant who files a petition pursuant to P.C. 1473(f) (a habeas corpus petition after judgment alleging a violation of P.C. 745) has been sentenced to death, and it applies to cases where the defendant has filed a motion pursuant to P.C. 1473.7 because of actual or potential immigration consequences, regardless of when the judgment or disposition became final. (P.C. 1473.7 permits the filing of a motion to vacate a conviction or sentence if a person is no longer in custody, based on not understanding immigration consequences, or newly discovered evidence of actual innocence, or a violation of P.C. 745.)

3. Beginning January 1, 2024, P.C. 745 applies to cases where a defendant is currently serving a sentence in state prison, or in county jail pursuant to P.C. 1170(h), or is committed to the Division of Juvenile Justice, at the time a P.C. 1473(f) petition is filed (a habeas corpus petition after judgment alleging a violation of P.C. 745), regardless of when the judgment or disposition became final.

4. Beginning January 1, 2025, P.C. 745 applies to all cases filed pursuant to P.C. 1473(f) or P.C. 1473.7 in which judgment became final for a felony conviction, or for a juvenile disposition that resulted in a commitment to DJJ, on or after January 1, 2015.

5. Beginning January 1, 2026, P.C. 745 applies to all cases filed pursuant to P.C. 1473(f) or 1473.7 in which judgment was for a felony conviction, or for a juvenile disposition that resulted in a commitment to DJJ, regardless of when the judgment or disposition became final.

continued

The Changes

1. **Disqualification of Judges**: Adds that if a motion is based in whole or in part on conduct or statements by the judge, the judge must disqualify himself or herself from any further proceedings under this section.

2. **Timeliness of the Motion***:* Requires that if a P.C. 745 motion is made at trial, it must be made as soon as practicable upon the defendant learning of the alleged violation. Provides that a motion that is not timely may be waived, in the court's discretion.

3. **Admissible Evidence***:* Adds that at a hearing on a P.C. 745 motion, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are all admissible for the limited purpose of determining whether a violation occurred.

4. **Intentional Discrimination Need Not Be Proved***:* Specifically provides that a defendant does not need to prove intentional discrimination.

5. **Protective Orders***:* Adds that a judge may subject the disclosure of evidence to a defendant to a protective order, to protect a privacy right or privilege, instead of permitting redaction. Provides that if a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court is prohibited from ordering the release of records to the defendant.

6. **Modification of a Judgment***:* Adds that if the court finds only a violation of subdivision (a)(3) (that a defendant was charged or convicted of a more serious offense than defendants of other races who engaged in similar conduct and are similarly situated), the court may modify the judgment to a lesser included or lesser related offense. (Previously the court was required to vacate the conviction and sentence, and modify the judgment to impose an appropriate remedy.)

7. **Juvenile Transfer Cases***:* Adds that P.C. 745 applies to adjudications to transfer a juvenile case to adult court. (P.C. 745 already provided, and continues to provide, that it applies to adjudications and dispositions in the "juvenile delinquency system.")

continued

8. **New Subdivision (k)***:* Adds a new subdivision (k) to provide that for P.C. 745 petitions filed in cases for which judgment was entered before January 1, 2021, and that are based on a violation of subdivision (a)(1) or (a)(2), "the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment."

   (Subdivisions (a)(1) and (a)(2) involve a judge, attorney, law enforcement officer, expert witness, or juror exhibiting bias or animus towards the defendant because of race, or using racially discriminatory language about the defendant's race.)

9. **Definitions**

   A. Redefines the phrases "more frequently sought or obtained" and "more frequently imposed" in terms of what the totality of the evidence demonstrates, including non-statistical evidence.

      Here is the new definition of these terms: "the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or non-statistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions, and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin."

   B. Adds a definition of "relevant factors": "as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing

continued

decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions."

C. Adds a definition of "similarly situated": "means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant's conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence."

[This bill also amends P.C. 1473. See below for more information.]

P.C. 786.5
(New)
(Ch. 949) (AB 1613)
(Effective 1/1/2023)

Revives this theft jurisdiction statute that previously had a sunset date of July 1, 2021, to provide that specified theft offenses committed in multiple jurisdictions may be prosecuted together in one jurisdiction.

The language is identical to how it was previously worded **except that it is now limited to prosecutions brought by the Attorney General**, and does not apply to district attorneys or city attorneys. The first part of the statute reads "The jurisdiction of a criminal action brought by the Attorney General for theft …."

P.C. 786.5 applies to theft (P.C. 484(a)), organized retail theft (P.C. 490.4), and receiving/possessing stolen property (P.C. 496). It provides that the jurisdiction of a criminal action includes the county where an offense occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring promoting, or aiding in the commission of the offense.

Provides that if multiple offenses, either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses. Also provides that jurisdiction extends to all associated offenses connected

continued

together in their commission to the underlying offenses. This revived version of P.C. 786.5 does not contain a sunset date.

[The introduced version of this bill applied to all prosecutors, just as the pre-July 2021 version did. The bill was later amended to apply only to the Attorney General. The legislative history of the bill does not contain any explanation for why district attorneys were deliberately excluded, but the author's statement includes this sentence: "The efficiency and effectiveness of cross jurisdictional charging needs to be restored to the Attorney General to make sure our investments in the Department of Justice to address retail theft are spent wisely." (In January 2022, the Governor announced a plan to provide $18 million to the Attorney General over three years to create a dedicated team of investigators and prosecutors to focus on organized theft crime rings that cross jurisdictional lines.)]

P.C. 801.6
(Amended)
P.C. 801.8
(New)
(Ch. 587) (AB 2274)
(Effective 1/1/2023)

Expands the statute of limitations for the misdemeanor crime of a mandated reporter of child abuse or severe neglect (other than sexual assault) failing to report abuse or neglect. Instead of a one-year statute of limitations from the date of the crime, failing to report child abuse or neglect may be charged within one year of the **discovery** of the crime, but in no case later than four years after its commission.

The statute of limitations for the crime of failing to report child sexual assault is still within five years of the date of the offense, but has been moved from P.C. 801.6 to new 801.8.

New P.C. 801.8 contains the statute of limitations for mandated reporters failing to report child sexual assault and failing to report child abuse or severe neglect that is not sexual assault.

P.C. 801.6 continues to provide that the statute of limitations for P.C. 368 elder and dependent adult abuse (but not theft or embezzlement) is within five years of the occurrence of the crime.

Existing P.C. 11166(c) continues to provide that a mandated reporter intentionally concealing his or her failure to report is a continuing offense.

P.C. 803
(Amended)
(Ch. 258) (AB 2327)
(Effective 1/1/**2024**)

Makes a non-substantive, technical amendment to update cross-references to the H&S 803(e).

P.C. 803(e) specifies a number of offenses in the Water Code, the Health & Safety Code, the Penal Code, and the Business & Professions Code for which the statute of limitations does not commence to run until the offense has been discovered or could reasonably have been discovered.

The cross-reference to H&S 25300–25395.45 is changed to new H&S 78000–81050 in Division 45 of the Health & Safety Code. AB 2327 is a lengthy bill that updates code sections that cross-reference the Carpenter-Presley-Tanner Hazardous Substance Account Act, which was reorganized without substantive amendment by AB 2293.

[Uncodified Section 130 of this bill provides that the bill will become operative on January 1, 2024, only if AB 2293 is also operative on January 1, 2024. AB 2293 was indeed signed into law (Chapter 257) and becomes operative on 1/1/2024. AB 2293 reorganizes the Carpenter-Presley-Tanner Hazardous Substance Account Act without substantive amendment by repealing H&S 25300–25395.45 (Chapter 6.8 of Division 20 of the Health and Safety Code) and re-codifying the provisions in new H&S 78000–81050 (Division 45 of the Health & Safety Code).]

P.C. 819
(New)
(Ch. 810) (SB 107)
(Effective 1/1/2023)

Provides that it is the public policy of California that an out-of-state warrant for a person based on violating another state's law against providing, receiving, or allowing a child to receive "gender-affirming health care" or "gender-affirming mental health care" is the lowest law enforcement priority.

Prohibits California law enforcement from making or participating in an arrest, or from participating in the extradition, pursuant to an out-of-state warrant for another state's law against "gender-affirming care" for a child, if that conduct or procedure is lawful under California law.

Prohibits California law enforcement from cooperating with or providing information to another state about lawful "gender-affirming care" that occurs in California.

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[This bill also amends P.C. 1326 (subpoenas) and amends and adds other sections in the Civil Code, Code of Civil Procedure, and Family Code. Its purpose is to prohibit California law enforcement and health care providers from cooperating with, or aiding, another state that has different laws on what medical procedures are appropriate and safe for children.]

P.C. 830.1
(Amended)
(Ch. 416) (AB 2735)
(Effective 1/1/2023)

Adds Merced County to the list of counties in subdivision (c), for which a deputy sheriff who is employed to perform duties relating to custodial assignments, including the custody, care, supervision, and transportation of inmates, is a peace officer whose authority extends to any place in California while engaged in the performance of his or her duties.

P.C. 830.4
(Amended)
(Ch. 478) (AB 1936)
(Effective 1/1/2023)

Makes technical, non-substantive amendments to this section, which lists persons who are peace officers who have authority anywhere in California for the purpose of performing their duties and who may carry firearms only if authorized by their employing agency.

Changes the reference to security officers of Hastings College of Law to security officers of "the college named in Section 92200 of the Education Code." This bill also amends Educ. C. 92200 to change the name of Hastings College of the Law to the "College of the Law, San Francisco."

Also corrects a cross-reference to Sections 143 and 146 by clarifying that they are in the Military and Veterans Code, not the Penal Code.

[This bill amends numerous other sections in the Code of Civil Procedure, the Education Code, the Government Code, and the Health & Safety Code to change references to the Hastings College of the Law to the "college named in Section 92200 of the Education Code."]

[Uncodified Section One of the bill details the establishment of Hastings College of the Law in 1878 by Serranus Clinton Hastings. It claims that research has determined he engaged in genocidal acts against Native California Indigenous Peoples in the 1850s, and that his name must be removed

continued

from the law school "to end this injustice and begin the healing process for the crimes of the past."]

P.C. 830.7
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Adds Museum Security Officers and Supervising Museum Security Officers at Exposition Park (in Los Angeles), who were appointed to their positions before March 1, 2022, to the list of persons who are not peace officers but may exercise the power of arrest during the course and scope of employment, even if they have not yet completed the regular basic training course prescribed by the Commission on Peace Officer Standards and Training (POST).

[In 2021, AB 483 removed Exposition Park Museum security officers from P.C. 830.7 and added them to 830.3 in order to grant them peace officer status. Existing P.C. 830.7 provides that specified persons may exercise arrest powers, but only if they have successfully completed a course in the powers of arrest. Adding museum security officers appointed before March 1, 2022 but who have not completed the basic POST course, ensures these security officers may exercise the powers of arrest.]

P.C. 832.7
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Corrects an erroneous cross-reference in subdivision (b)(2) to clarify that specified peace officer and custodial officer personnel records relating to incidents occurring before January 1, 2022 are not subject to the 45-day maximum public inspection disclosure deadline until January 1, 2023. Subdivision (b)(2) continues to apply to peace officer and custodial officer personnel records involving sustained findings of unreasonable or excessive force, sustained findings of unlawful arrests or unlawful searches, and sustained findings of prejudicial or discriminatory conduct/verbal statements based on race, color, religion, physical disability, sex, gender, sexual orientation, etc.

The cross-reference is corrected to paragraph (11) in subdivision (b), which provides that except where public disclosure may be delayed pursuant to existing subdivision (b)(8), such as where an active criminal investigation is ongoing or criminal charges are pending, personnel records subject to disclosure to the public must be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

P.C. 832.19
(Repealed by its own provisions)
(Effective 1/1/2023)

Beginning January 1, 2023, facial recognition technology on police body-worn cameras is **not** banned.

P.C. 832.19 was created by AB 1215, effective 1/1/2020, and contained a sunset date of 1/1/2023. It banned facial recognition technology on police body-worn cameras. Uncodified Section One of AB 1215 set forth the Legislature's findings and declarations including the claim that facial recognition and biometric surveillance "pose a unique and significant threat to civil rights and civil liberties." Law enforcement opposed AB 1215, pointing out that courts have repeatedly held that people on public streets or in public places have no reasonable expectation of privacy; that the bill should establish minimum standards and policies related to facial recognition and body-worn cameras, rather than banning the technology; and that banning the use of facial recognition impairs the ability of law enforcement to protect the public, especially at huge events such as festivals, World Cup Soccer, the Olympics, Disneyland, etc.

In 2022, SB 1038 would have removed the January 1, 2023 sunset day to make permanent the ban on body-worn camera facial recognition technology. However, SB 1038 failed to get through the Legislature, becoming an inactive bill in May 2022. Numerous law enforcement agencies had opposed it.

P.C. 851.93
(Amended)
(Ch. 814) (SB 731)
(Effective 7/1/2023)

Beginning July 1, 2023, expands the DOJ automatic arrest record relief program, in the felony arrest category, beyond arrests for P.C. 1170(h) county jail felonies, to felonies punishable in state prison. For felonies punishable in state prison or pursuant to P.C. 1170(h) for fewer than eight years, an offender is eligible for relief if at least three calendar years have elapsed since the date of the arrest, and no conviction occurred or there was an acquittal. For felonies punishable by 8 or more years in state prison or pursuant to P.C. 1170(h), at least six years must have elapsed since the date of the arrest, and no conviction occurred or there was an acquittal.

[This bill also amends P.C. 1203.41 to expand expungement/dismissal relief from P.C. 1170(h) convictions to also include state prison convictions. And it amends P.C. 1203.425 to expand automatic conviction relief to state prison felonies and to P.C. 1170(h) felonies. See below.]

P.C. 853.6
(Amended)
(Ch. 856) (AB 2294)
(Effective 9/30/2022)

Substantially revives the version of this section that was in effect before its July 1, 2021 sunset date.

Adds two additional reasons for a peace officer to *not* release a misdemeanor arrestee with a notice to appear:

1. The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months.
2. There is probable cause to believe the person is guilty of committing organized retail theft (P.C. 490.4).

[This is almost identical to the version of P.C. 853.6 that was in effect until 7/1/2021, except that today's version does not include vehicles in #1, above. Before 7/1/2021, it read "cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous six months."]

[Provides that this version of P.C. 853.6 will sunset on January 1, 2026.]

P.C. 977
(Amended)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Makes a number of changes to this section to expand the use of remote court proceedings, add conditions for its use, and add provisions for the waiver of a defendant's physical and/or remote presence.

Provides that this version of P.C. 977 will sunset on January 1, 2024, and the pre-6/30/2022 version of P.C. 977 will once again be operative.

Misdemeanor Cases
Subdivision (a)(1) continues to provide that defendants charged with a misdemeanor only may appear by counsel, and retains the exceptions for domestic violence and driving under the influence crimes. Adds that the initial court appearance, arraignment, plea, and all other proceedings, except jury and court trials, may be conducted remotely.

Continues to require that misdemeanor domestic violence defendants "be present" for arraignment, sentencing, and when they need to be informed about the conditions of a P.C. 136.2 protective order. For a misdemeanor driving under the influence crime (P.C. 191.5(b), V.C. 23103.5, V.C. 23152, V.C. 23153), the court continues to have the authority to order the defendant to "be present" for arraignment, plea, and sentencing.

continued

A misdemeanor defendant may continue to appear by counsel as before, except for domestic violence cases and except for driving under the influence cases when the court orders the defendant to be present. All proceedings except jury and court trials may be conducted remotely. Thus, a misdemeanor defendant could be remotely present at any hearing except for a jury or court trial. Subdivision (a)(1) prohibits misdemeanor jury and court trials from being conducted remotely. And subdivision (c)(1)(D) prohibits a misdemeanor defendant from appearing remotely for a jury or court trial.

Pursuant to new subdivision (b)(3), the court may specifically direct a defendant to be physically or remotely present at any particular proceeding or portion thereof.

Felony Cases
Amends subdivision (b)(1) to change the word "personally" to "physically" and requires that in a felony case, **except as provided in subdivision (c***)*, a defendant must be physically present at arraignment, at the time of plea, during the preliminary hearing, during portions of a trial when evidence is taken, and at sentencing. Subdivision (b)(1) also requires that the defendant be physically or remotely present "at all other proceedings" unless physical or remote presence is waived, with leave of court and with approval of defense counsel.

Subdivision (c)(1)(A) provides that if a defendant waives the right to physical presence, criminal proceedings may be conducted remotely. It contains several exceptions that prohibit remote appearances in felony cases:

1. P.C. 977(c)(1)(D) prohibits a felony (or misdemeanor) defendant from appearing remotely for a jury or court trial. (But P.C. 977(c)(2)(A) permits a felony defendant to waive **both** physical and remote appearance for noncritical portions of a trial when no testimony is being taken.)

2. P.C. 977(c)(1)(E) prohibits a felony defendant from appearing remotely at sentencing, except for postconviction relief proceedings "and as otherwise provided by law."

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3. P.C. 977(c)(1)(B) authorizes a court to specifically direct a defendant, either personally or through counsel to be physically present at any particular felony proceeding or portion thereof.

Therefore, it appears that a felony defendant must appear physically at sentencing and for trial when testimony is being taken, and must appear physically or remotely for arraignment, plea, and preliminary hearing.

As mentioned above, subdivision (b)(1) provides that for "all other proceedings," a felony defendant must be physically or remotely present unless the defendant waives the right to be physically or remotely present, "with leave of court and with approval of defendant's counsel." For "all other proceedings," a felony defendant may waive both physical and remote presence. Thus, for hearings that are not arraignments, pleas, preliminary hearings, trials while evidence is being taken, and sentencings, it appears that a felony defendant may appear by counsel only, if physical and remote presence are both waived, and the court and defense counsel consent. Examples of "other proceedings" could be motions to suppress, motions to dismiss, and pre-trial settlement conferences. *But a court can always require a felony defendant to be physically present at any particular proceeding.* (See subdivision (c)(1)(B), above.)

Waiver of Physical and/or Remote Presence
New subdivision (b)(2) provides that the waiver of a defendant's right to be physically or remotely present may be in writing and filed with the court, or, if the court consents, may be entered personally by the defendant or defense attorney (which appears to refer to an oral waiver.)

Requires a defendant's personal waiver to be on the record. Requires that the waiver state that the defendant has been advised of the right to be physically or remotely present for the hearing at issue, and agrees that notice to the defense attorney that the defendant is required to be physically or remotely present at a future date and time, constitutes notice to the defendant of that requirement.

Permits a waiver to be entered by a defense attorney, after the defense attorney has stated on the record that the defendant has been advised of the right to be physically or remotely present for the hearing at issue, has waived that

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right, and agrees that notice to the defense attorney that the defendant is required to be physically or remotely present at a future date and time, constitutes notice to the defendant of that requirement.

Subdivision (b)(4) sets forth the language of a written waiver. New subdivision (h) requires the court to make a finding on the record that any waiver entered into pursuant to P.C. 977 is knowingly, voluntarily, and intelligently made.

A Court Is Authorized to Require the Physical or Remote Presence of a Felony or Misdemeanor Defendant at Any Proceeding, Including Upon The Request of a Victim
New subdivision (b)(3) authorizes the court to direct a defendant, either personally or through counsel, "to be physically or remotely present at any particular proceeding or portion thereof, including upon the request of a victim, to the extent required by Section 28 of Article 1 of the California Constitution."

This provision appears to apply to both felony and misdemeanor defendants. It grants the court the power on its own initiative to order a defendant to be physically or remotely present, and it authorizes a court to order presence at the request of a victim.

[Article 1, Section 28 sets forth a number of crime victim rights, including the right to reasonable notice about specified hearings and proceedings, to be present at them, and to be heard, but does not explicitly include the right to demand that a defendant appear in person or remotely. However, the first part of subdivision (b)(3) authorizes a court to require a defendant's physical or remote presence on its own initiative, apart from any request by a crime victim.]

Witnesses May Appear Remotely
New subdivision (c)(1)(F) provides that a witness may appear remotely pursuant to new P.C. 977.3 at any misdemeanor or felony criminal proceeding, **except for a felony trial**. See below for more on new P.C. 977.3, which authorizes a witness to testify remotely, with the consent of the parties and the court. P.C. 977.3 requires the defendant, on the record, to waive the right to have a witness testify in person.

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Authorizes a Court to Permit Prosecutors and Defense Attorneys to Appear Remotely, as Much as is Practicable
New subdivision (e) authorizes a court, as appropriate and practicable, to allow a prosecutor or defense attorney to participate in a criminal proceeding through the use of remote technology without being physically present in the courtroom, subject to new subdivision (f) (see more on subdivision (f), below).

New subdivision (c)(1)(C) provides that a defense attorney cannot be required to be physically present with the defendant if remote technology allows for private communication between attorney and client, unless the defense attorney requests that the court permit the appearance without private communication.

A Court Must Require a Prosecutor, Defense Attorney, Defendant, or Witness to Appear in Person if There are Quality or Audibility Issues With the Technology
New subdivision (f) sets forth several circumstances pursuant to which a court must require an appearance in person if any of the following circumstances cannot be resolved in a reasonable amount of time:

a.) The court does not have the technology necessary to conduct the proceeding remotely;
b.) The quality or audibility of the technology prevents the effective management or resolution of the proceeding;
c.) The quality or audibility inhibits the court reporter's ability to accurately prepare a transcript of the proceeding;
d.) The quality or audibility prevents defense counsel from providing effective representation; or
e.) The quality or audibility inhibits a court interpreter's ability to provide language access, including the ability to communicate and translate directly with the defendant and the court.

A Court Must Have a Process in Place to Alert the Judicial Officer About Technology or Audibility Issues
New subdivision (g)(1) requires a court to have a process in place so that attorneys, defendants, witnesses, court reporters, court interpreters, and court personnel can alert a judge about technology and/or audibility issues that arise during a proceeding.

continued

Court Reporters are Required to be Physically Present in the Courtroom
New subdivision (g)(2) requires a court reporter to be physically present in the courtroom when a remote proceeding is being conducted.

Judicial Council
New subdivision (i) requires the Judicial Council to adopt rules and standards to implement the provisions of P.C. 977.

A Court May Continue to Conduct Proceedings When an In-Custody Defendant Refuses to Come to Court
Subdivision (d) remains as is, and continues to set forth procedures for a court to conduct a trial, hearing, or other proceeding, with or without a waiver, when a defendant is in custody and is refusing to appear in court without good cause.

P.C. 977.3
(New)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Permits a witness to testify remotely in a misdemeanor or felony criminal proceeding, except for felony trials, if there is written or oral consent of the parties on the record and the court also consents. Requires the defendant to waive, on the record, the right to have a witness testify in person. Requires the court to make a finding on the record that the waiver is knowingly, voluntarily, and intelligently made.

Therefore, for example, a witness could testify remotely at a bail hearing, a preliminary hearing, a motion to suppress, a sentencing, or a misdemeanor trial.

Provides that notwithstanding the above, a court may allow a witness to testify remotely "as otherwise provided by statutes regarding the examination of victims of sexual crimes and conditional examinations of witnesses."

For example, P.C. 1347 permits a minor age 13 or younger to testify at a trial or preliminary hearing by closed-circuit television in a case involving a sex offense, a violent felony, P.C. 273a child endangerment, or P.C. 273d corporal injury on a child.

P.C. 1347.1 permits a minor age 15 or younger to testify at a trial or preliminary hearing by closed-circuit television in a P.C. 236.1 human trafficking case.

continued

P.C. 1335 and 1336 authorize the conditional examination of witnesses in serious felony cases, domestic violence cases, and human trafficking cases, and in cases where a material witness is about to leave the state, or is sick or infirm and will be unable to testify at trial, or is age 65 or older.

P.C. 1340 authorizes two-way video conference conditional examinations when the witness is so sick or infirm as to be unable to testify in person.

Requires the Judicial Council to adopt rules and standards to implement the policies and provisions of this new section.

Provides that this new section will sunset on January 1, 2024.

P.C. 978.5
(Amended)
(Ch. 856) (AB 2294)
(Effective 9/30/2022)

Substantially revives the version of this section that was in effect before its July 1, 2021 sunset date.

Adds this additional circumstance for which a court is authorized to issue a bench warrant for failing to appear in court: If the defendant has been cited or arrested for misdemeanor or felony theft from a store and has failed to appear in court in connection with that charge or those charges in the previous six months.

[This is almost identical to the version of P.C. 978.5 that was in effect until 7/1/2021, except that theft from a vehicle is no longer specified in this circumstance.]

P.C. 1001.36
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

and

(Amended)
(Ch. 735) (SB 1223)
(Effective 1/1/2023)

Beginning June 30, 2022, SB 184 amends this mental disorder diversion statute to eliminate the requirement that the defendant agree to comply with treatment in order for diversion to be granted, if the defendant has been found mentally incompetent and found by the court to be an appropriate candidate for diversion, in lieu of commitment for restoration of competency treatment pursuant to existing P.C. 1370(a)(1)(B)(iv), and as a result of the defendant's mental incompetence, cannot agree to comply with treatment. (All other defendants must agree to comply with treatment in order to be granted mental disorder diversion.)

Beginning January 1, 2023, SB 1223 makes these additional changes to make it more likely that mental disorder

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diversion will be granted and to reduce the diversion period for misdemeanor defendants:

1. Instead of requiring that a defendant have a "recent" diagnosis for a mental disorder, a defendant must now have a "diagnosis or treatment for a diagnosed mental disorder within the last five years."

   (Therefore, a defendant with a diagnosis made 10 years ago who was treated for that mental disorder within the last five years, would be eligible for diversion.)

2. Creates a presumption that a mental disorder was a significant factor in the commission of the crime, by adding that if a defendant has been diagnosed with a mental disorder, the court shall find that the disorder was a significant factor in the commission of the crime, "unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense." (This effectively shifts the burden **from** a defendant having to prove that the mental disorder was a significant factor **to** the prosecution having to prove a negative by clear and convincing evidence—that the mental disorder was not a motivating factor, a causal factor, or a contributing factor.)

3. Reduces, from two years to one year, the maximum mental disorder diversion period for misdemeanor crimes. (Retains two years as the maximum diversion period for felony crimes.)

Additional amendments:

1. Adds a new sub-paragraph to provide that if a court refers a defendant to a county mental health agency and the agency determines it is not able to provide services to the defendant, the court must accept a written declaration to this effect in lieu of requiring live testimony. Provides that the declaration does not constitute evidence that the defendant is not qualified or not suitable for diversion.

2. Adds a definition of "qualified mental health expert," which includes, but is not limited to, a psychiatrist, a psychologist, a person described in W&I 5751.2, and "a person whose knowledge, skill, experience, training, or education qualifies them as an expert."

continued

3. Continues to require that in order for a defendant to be found suitable for diversion, the court must find that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community. This bill makes a non-substantive amendment to this paragraph on dangerousness by adding that the court may consider a defendant's treatment plan in assessing the defendant's dangerousness. Existing law already permits the court to consider the opinions of the district attorney, the defense, and, a qualified mental health expert; the defendant's violence and criminal history; the current charged offense and "any other factors that the court deems appropriate." Because the court could already consider anything it finds appropriate in assessing dangerousness, adding something specific, such as a defendant's treatment plan, is not a substantive amendment.

SB 1223 does not change the list of disqualifiers for mental disorder diversion (e.g., murder; voluntary manslaughter; an offense that requires registration as a sex offender, except P.C. 314; rape; lewd or lascivious act on a child under age 14; assault with intent to commit rape, sodomy, or oral copulation in violation of P.C. 220; rape or sexual penetration in concert in violation of P.C. 264.1; continuous sexual abuse of a child in violation of P.C. 288.5; and crimes involving weapons of mass destruction in violation of P.C. 11418(b) or P.C. 11418(c).)

[SB 1223 also amends P.C. 1370 and 1370.01 to update cross-references to P.C. 1001.36.]

P.C. 1001.81
P.C. 1001.82
(New)
(Ch. 856) (AB 2294)
(Effective 9/30/2022)

Revives the theft crimes diversion or deferred entry of judgment program that had a sunset date of July 1, 2021, and expands it to apply to a single theft offense as well as repeat theft offenses. Before July 1, 2021, it applied only to repeat theft offenses.

Adds new Chapter 2.9D in Title 6 of Part 2 of the Penal Code, entitled "Theft and Repeat Theft Crimes Diversion or Deferred Entry of Judgment Program."

Continues to authorize a city or county prosecuting attorney, or a probation department, to create and conduct a theft crimes diversion or deferred entry of judgment program.

continued

Sets forth details for the program, which are identical to those in effect from January 1, 2019 to July 1, 2021, except that this bill adds references to "a theft offense" so that the program applies to a single theft.

P.C. 1001.95
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Expands the list of disqualifiers for misdemeanor diversion by adding all domestic violence offenses described in Fam. C. 6211 and P.C. 13700(b). Previously the only domestic violence offenses not eligible for misdemeanor diversion were P.C. 243(e) and 273.5.

Continues to list, as disqualifiers, crimes that require the defendant to register as a sex offender pursuant to P.C. 290 and violations of P.C. 646.9 (stalking).

Fam. C. 6211 specifies abuse perpetrated against a spouse, former spouse, cohabitant, former cohabitant, person with whom the defendant is having or had a dating or engagement relationship, person with whom the defendant has a child, and any other person related by consanguinity (blood) or affinity (marriage) within the second degree.

[There appears to be some disagreement about the definition of a second-degree relationship. A number of definitions found online in a variety of contexts list these as second-degree relationships: grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings. But Probate C. 13 specifies siblings as second-degree relationships; aunts, uncles, nieces, and nephews as third-degree; and first cousins as fourth-degree.]

P.C. 13700(b) specifies abuse perpetrated against most of the categories of victims that Fam. C. 6211 specifies: spouse, former spouse, cohabitant, former cohabitant, person with whom the defendant is having or had a dating or engagement relationship, and person with whom the defendant has a child.

[The legislative history of this bill states that this amendment is a technical change to exclude all domestic violence offenses from judicial discretion for misdemeanor diversion, but this is not accurate. This is a **substantive** amendment that expands the disqualifiers for misdemeanor diversion. By adding abuse against specified persons in Fam. C. 6211, which includes relationships beyond those listed in

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P.C. 243(e) and P.C. 273.5 (e.g., second-degree relationships), a P.C. 242 battery against a second-degree relative is now disqualified from misdemeanor diversion.]

P.C. 1026
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Amends this statute, which sets forth the procedures for a defendant found not guilty by reason of insanity, to add to subdivision (c) the community program director's designee, and the independent evaluation panel created by new W&I 4360.5, to those persons (the medical director of the state hospital and the community program director) who may make written recommendations to the court to transfer an insane defendant from a state hospital to a public or private treatment facility.

[This bill also creates new W&I 4360.5 to require the State Department of State Hospitals to establish a statewide panel of independent evaluators to be responsible for Forensic Conditional Release Program placement determinations. For more information, see W&I 4360.5, in the Welfare & Institutions section of this publication.]

P.C. 1026.2
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Amends this statute, which sets forth the procedures for the restoration of sanity of a defendant previously found not guilty by reason of insanity, to add to subdivision (g) the community program director's designee, and the independent evaluation panel created by new W&I 4360.5, to those persons (the community program director) who may make written recommendations to the court as to which forensic conditional release program is the most appropriate for the defendant.

[This bill also creates new W&I 4360.5 to require the State Department of State Hospitals to establish a statewide panel of independent evaluators to be responsible for Forensic Conditional Release Program placement determinations. For more information, see W&I 4360.5, in the Welfare & Institutions section of this publication.]

P.C. 1043
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Amends subdivision (e)(4) to restore long-standing law authorizing a court to proceed with a misdemeanor trial when an out-of-custody defendant is absent voluntarily with knowledge that the trial is to be held or is being held. In 2021, AB 700 amended P.C. 977, 1043, and 1043.5 to

continued

authorize a court to proceed with a hearing when an **in-custody** defendant refuses transportation to the court. In the process of amending P.C. 1043 to add a new subdivision (f) about in-custody defendants, the long-standing provision relating to out-of-custody misdemeanor defendants in subdivision (e)(4) was inadvertently deleted.

Subdivision (e)(4) will now read as follows: "(4)(A) If the defendant is in custody, proceed with the trial in the defendant's absence as authorized in subdivision (f). (B) If the defendant is out of custody, proceed with the trial if the court finds the defendant has absented themselves voluntarily with full knowledge that the trial is to held or is being held."

P.C. 1043.5
(Amended)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Amends subdivision (d) to provide that the requirement that a defendant be personally present at a preliminary hearing does not limit the right of a defendant to waive the right to be physically present, or to appear through the use of remote technology in accordance with P.C. 977. Previously subdivision (d) provided that a defendant may waive "the right to be present" at a preliminary hearing.

Provides that this version of P.C. 1043.5 will sunset on January 1, 2024, and the pre-6/30/222 version of P.C. 1043.5 will once again be operative.

[For more on physical and remote appearances, see P.C. 977, above, which is also amended by this bill.]

P.C. 1127e
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of sex crimes (P.C. 261 and 261.5) for which the term "unchaste character" shall not be used by a court in an instruction to the jury.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022,

continued

such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that P.C. 1127e still applies to P.C. 262 cases.]

P.C. 1170
(Amended)
(Ch. 744) (AB 960)
(Effective 1/1/2023)

Moves compassionate release provisions from subdivision (e) to new P.C. 1172.2, expands them to make release criteria easier to meet, and creates a presumption favoring recall and resentencing.

Amended subdivision (e) now provides that a court may recall and resentence an inmate pursuant to the compassionate release program in P.C. 1172.2.

[This bill also amends P.C. 1170.02 to update a cross-reference from P.C. 1170(e) to new 1172.2, and adds new P.C. 1172.2. See below for more information.]

P.C. 1170.01
(Renumbered to new P.C. 1172)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Creates a new Article 1.5 in Chapter 4.5 of Title 7 of Part 2 of the Penal Code entitled "Recall and Resentencing" in order to renumber five resentencing statutes without substantive amendment, so that they are together in new P.C. 1172–1172.75.

P.C. 1170.01 is new P.C. 1172. (The County Resentencing Pilot Program.)

See below for P.C. 1170.3, 1170.95, 1171, and 1171.1.

P.C. 1170.02
(Amended)
(Ch. 744) (AB 960)
(Effective 1/1/2023)

Updates a cross-reference from P.C. 1170(e) to new 1172.2 because this bill moves the compassionate release provisions in P.C. 1170(e) to new 1172.2, expands them to make release criteria easier to meet, and creates a presumption favoring recall and resentencing.

See P.C. 1172.2, below, for more information.

P.C. 1170.02 continues to provide that an inmate is not eligible for compassionate release if convicted of the first-degree murder of a peace officer who was killed in the line of duty or in retaliation for the performance of official duties.

P.C. 1170.03
(Renumbered to new P.C. 1172.1)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Creates a new Article 1.5 in Chapter 4.5 of Title 7 of Part 2 of the Penal Code entitled "Recall and Resentencing" in order to renumber five resentencing statutes without substantive amendment, so that they are together in new P.C. 1172–1172.75.

P.C. 1170.03 is new P.C. 1172.1. (Resentencing on a court's own motion, or upon the recommendation of state prison authorities, a county correctional administrator, a district attorney, or the Attorney General. P.C. 1170.03 was previously 1170(d)(1).)

See above for P.C. 1170.01 and below for P.C. 1170.95, 1171, and 1171.1.

P.C. 1170.91
(Amended)
(Ch. 721) (SB 1209)
(Effective 1/1/2023)

Expands the ability of a defendant who has suffered military-related trauma to petition for recall and resentencing by eliminating the requirement that a defendant must have been sentenced before January 1, 2015 and by making this section explicitly retroactive. Now a defendant currently serving a sentence who was sentenced at any time may bring such a petition, unless the defendant has a disqualifying conviction. (P.C. 1170.91 continues to apply to felony offenses only, and continues to permit a court to consider military-related trauma as a factor in mitigation when imposing sentence.)

Expands this section beyond defendants sentenced to a determinate term, to include those sentenced to an indeterminate life sentence, by eliminating the cross-reference to P.C. 1170(b) in the phrase "when imposing a term under subdivision (b) of Section 1170" and instead providing "when imposing a sentence."

Adds that P.C. 1170.91 does **not** apply to a defendant who has a current or prior conviction for an offense listed in P.C. 667(e)(2)(C)(iv) (a "superstrike") or a current or prior conviction for an offense requiring registration as a sex offender pursuant to P.C. 290(c).

But it **would** apply to a defendant with a current or prior serious or violent conviction that is not a superstrike or a P.C. 290 offense.

continued

Authorizes the court to do either of the following:

1. Reduce the term of imprisonment by modifying the sentence, or,

2. If both the district attorney and the defendant agree, vacate the conviction and impose judgment on any necessarily included lesser offense or lesser related offense.

P.C. 1170.95
P.C. 1171
P.C. 1171.1
(Renumbered to new P.C. sections)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Creates a new Article 1.5 in Chapter 4.5 of Title 7 of Part 2 of the Penal Code entitled "Recall and Resentencing" in order to renumber five resentencing statutes without substantive amendment, so that they are together in new P.C. 1172–1172.75.

P.C. 1170.95 is new P.C. 1172.6. (Resentencing for murder, felony murder, attempted murder, and manslaughter.)

P.C. 1171 is new P.C. 1172.7. (Resentencing for defendants serving a term for three-year H&S 11370.2 drug prior enhancements.)

P.C. 1171.1 is new P.C. 1172.75. (Resentencing for defendants serving a term for one-year P.C. 667.5(b) prison prior enhancements.)

See above for P.C. 1170.01 and 1170.03.

P.C. 1172
P.C. 1172.1
(Renumbered from existing P.C. sections)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Creates a new Article 1.5 in Chapter 4.5 of Title 7 of Part 2 of the Penal Code entitled "Recall and Resentencing" in order to renumber five resentencing statutes without substantive amendment, so that they are together in new P.C. 1172–1172.75.

P.C. 1170.01 is new P.C. 1172. (The County Resentencing Pilot Program.)

P.C. 1170.03 is new P.C. 1172.1. (Resentencing on a court's own motion, or upon the recommendation of state prison authorities, a county correctional administrator, a district attorney, or the Attorney General. P.C. 1170.03 was previously 1170(d)(1).)

See below for P.C. 1172.6, 1172.7, and 1172.75.

P.C. 1172.2
(Moved from P.C. 1170(e) and expanded)
(Ch. 744) (AB 960)
(Effective 1/1/2023)

Moves prison and jail compassionate release provisions from P.C. 1170(e) to this new section, expands them to make release criteria easier to meet, and creates a presumption favoring recall and resentencing.

Continues to apply to state prison inmates, and to county jail inmates sentenced pursuant to P.C. 1170(h).

Continues to exclude inmates sentenced to death or to life without the possibility of parole. P.C. 1170.02 continues to exclude inmates convicted of the first-degree murder of a peace officer who was killed in the line of duty or in retaliation for the performance of official duties.

Continues to permit an inmate or family member to request consideration for recall and resentencing.

The Criteria
Provides that if the statewide or a county chief medical executive determines that an inmate meets "the medical criteria set forth in subdivision (b)," CDCR (for state prison inmates) or the county correctional administrator (for county jail inmates) is required to recommend to the court that the inmate's sentence be recalled.

Subdivision (b) lists two criteria, and it is not clear whether the medical executive must find both, in order to trigger a mandatory recommendation to the court for recall. Language in subdivision (a) provides that the inmate must satisfy "the medical criteria set forth in subdivision (b)." Criteria is a plural word (criterion is the singular) and subdivision (b) contains two circumstances. However, subdivision (d) provides that a physician employed by the department who determines that an inmate "has a serious and advanced illness with an end-of-life trajectory **or** has a medical condition or functional impairment that renders them permanently medically incapacitated" shall notify the chief medical executive of the prognosis. If the chief medical executive concurs with the prognosis, the warden is notified. It may be that a finding of either circumstance triggers a mandatory referral to the court, despite the language in subdivision (a) that the inmate must satisfy "the medical criteria."

continued

Subdivision (b) lists these two criteria:

1. The inmate has a serious and advanced illness with an "end-of-life trajectory." Specifies examples such as metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia.

2. The inmate is permanently medically incapacitated with a medical condition or functional impairment that renders the inmate permanently unable to complete basis activities of daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end-stage dementia, and that incapacitation did not exist at the time of original sentencing.

No definition of "end-of-life trajectory" is provided. *Note*: There is no longer a requirement that the inmate needs 24-hour care or that the inmate has only 12 months to live.

The Presumption Favoring Recall & Resentencing
Provides that if the court finds that the facts in #1 **or** #2 above, exist, there is a presumption favoring recall and resentencing, which can only be overcome if the inmate is an unreasonable risk of danger to public safety, based on the inmate's current physical and mental condition. An inmate simply being a threat to public safety is no longer the standard. Previously P.C. 1170(e) required a court to find that an inmate's release would "not pose a threat to public safety." Now only the inmate posing an unreasonable risk of danger to public safety prevents a release.

Court Hearing
Requires a court to hold a hearing within 10 days of receiving a recommendation for recall and resentencing. Provides that an inmate has the right to counsel, and, if indigent, to appointed counsel. Requires the referring physician to be available to the court or defense counsel as necessary throughout the recall and resentencing proceedings. Says nothing about the referring physician being available for the prosecution.

Judicial Council
Requires the Judicial Council, staring January 1, 2024, to release an annual report to the public with details such as

continued

the number of inmates referred for recall and resentencing, the number actually released, the number denied release, and the number who die before completing the recall and resentencing process, all broken down by race, age, and gender identity.

P.C. 1172.6
P.C. 1172.7
P.C. 1172.75
(Renumbered from existing P.C. sections)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Creates a new Article 1.5 in Chapter 4.5 of Title 7 of Part 2 of the Penal Code entitled "Recall and Resentencing" in order to renumber five resentencing statutes without substantive amendment, so that they are together in new P.C. 1172–1172.75.

P.C. 1170.95 is new P.C. 1172.6. (Resentencing for murder, felony murder, attempted murder, or manslaughter.)

P.C. 1171 is new P.C. 1172.7. (Resentencing for defendants serving a term for three-year H&S 11370.2 drug prior enhancements.)

P.C. 1171.1 is new P.C. 1172.75. (Resentencing for defendants serving a term for one-year P.C. 667.5(b) prison prior enhancements.)

See above for P.C. 1172 and P.C. 1172.1.

P.C. 1192.5
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262(a)(1) (forcible spousal rape) and former P.C. 262(a)(4) (spousal rape by threat to retaliate) to the list of sex crimes for which a court is not permitted to specify a particular punishment when resolving a case.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262(a)(1) and (a)(4) clarifies that P.C. 1192.5 still applies to these P.C. 262 cases.]

P.C. 1203
(Amended)
(Ch. 756) (AB 1744)
(Effective 1/1/2023)

Extends the date in subdivision (*l*), from January 1, 2023 to January 1, 2028, so that it continues to provide that a court may take a flash incarceration waiver from a defendant who is granted probation.

[This bill also extends the sunset date on P.C. 1203.35, which authorizes flash incarceration, and on the current version of P.C. 4019 which contains a cross-reference to P.C. 1203.35, from January 1, 2023 to January 1, 2028.]

P.C. 1203.055
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes committed on a public transit vehicle for which the court must require the defendant to serve some period of confinement.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that P.C. 1203.055 still applies to 262 cases.]

P.C. 1203.097
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes technical, non-substantive amendments to this section that pertains to the terms of probation in domestic violence cases by changing "battered women's shelter" references to "domestic violence shelter-based program," thereby making the reference gender neutral.

[When probation is granted in a domestic violence case, a court is permitted to order the defendant to make payments to a shelter.]

P.C. 1203.35
(Amended)
(Ch. 756) (AB 1744)
(Effective 1/1/2023)

Extends the sunset date on flash incarceration, from January 1, 2023 to January 1, 2028, so that a probation officer can continue to impose up to 10 consecutive days of jail time on a probation violator or on a person who violates mandatory supervision, without a court hearing, if the offender previously waived the hearing.

[This bill also extends the sunset date on P.C. 1203(*l*), and on the current version of P.C. 4019, both of which contain cross-references to P.C. 1203.35, from January 1, 2023 to January 1, 2028.]

P.C. 1203.4
P.C. 1203.4a
(Amended)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

Prohibits a court from denying a petition to expunge/dismiss a conviction on the grounds that the defendant has unpaid victim restitution or restitution fines.

P.C. 1203.4, which applies to probation cases, also provides that failing to pay victim restitution or restitution fines in full shall not be grounds for finding that a defendant did not fulfill the conditions of probation for the entire period of probation.

P.C. 1203.4a, which applies to misdemeanor cases in which probation was not granted and to infraction cases, also provides that failing to pay victim restitution or restitution fines in full shall not be grounds for finding that a defendant did not fully comply with and perform the sentence of the court, or for finding that a defendant has not lived an honest and upright life and has not conformed to and obeyed the laws of the land.

Note that before these amendments, judges had the discretion under both P.C. 1203.4 and 1203.4a to grant expungement/dismissal relief even if a defendant had not paid full victim restitution or restitution fines. Now a judge is prohibited from considering the individual circumstances of each case on the issue of restitution.

[This bill also adds similar language to P.C. 17 and other expungement statutes (P.C. 1203.41, 1203.42), to a sealing statute (P.C. 1203.45), and to new P.C. 1210.6. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

P.C. 1203.4b
(Amended)
(Ch. 771) (AB 160)
(Effective 9/29/2022)

Expands conviction dismissal/expungement relief to a defendant, who, while in state prison, "participated at an institutional firehouse" and has been released from custody. This section continues to provide for dismissal/expungement relief for a defendant who successfully participated in the California Conservation Camp program as a hand crew member while in state prison, or successfully participated as a member of a county incarcerated hand crew.

Note that the new language regarding institutional firehouse participation does not include the qualifier "successfully" in subdivision (a)(1), whereas the defendants who participated as hand crew members in state prison or for a county, are required to have "successfully" participated in order to be eligible for conviction relief. This appears to be a technical drafting error, because subdivisions (a)(3) and (b)(2) clearly require successful participation in an institutional firehouse.

[SB 1106 (Chapter 734): The version of P.C. 1203.4b contained in SB 1106 will **not** be effective, because AB 160 is the higher chaptered bill. An editor at LexisNexis was consulted and agrees with this. SB 1106 would have amended P.C. 1203.4b to prohibit a court from denying a petition to expunge/dismiss a conviction on the grounds that the defendant has unpaid victim restitution or restitution fines, and to provide that unpaid victim restitution or restitution fines shall not be grounds for finding that a defendant did not successfully participate in the California Conservation Camp program, or in a county program.

However, SB 1106 creates new P.C. 1210.6, which **is** effective on January 1, 2023. P.C. 1210.6 is a catchall section that applies to all dismissal/expungement statutes in this area of the Penal Code, including P.C. 1203.4b, and provides that when a court considers a petition for relief under Chapter One of Title 8 of Part 2 of the Penal Code (P.C. 1191–1210.5), an unfulfilled order of victim restitution or restitution fines shall not be grounds to deny relief. See more on P.C. 1210.6, below.]

[SB 1493 (Chapter 197): Note that the amendment made to P.C. 1203.4b(b)(4) by SB 1493 will also **not** take effect as it was supposed to on January 1, 2023, because Section 40 of SB 1493 (a public safety omnibus bill) provides that other bills prevail over it, regardless of the order in which the

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bills were signed. Neither AB 160 nor SB 1106 contain the amendment SB 1493 made to P.C. 1203.4b. SB 1493 amended subdivision (b)(4) to cross-reference the list of disqualifying offenses in subdivision (a)(1) in order to clarify that a defendant who successfully participated in a fire camp is prohibited from obtaining dismissal/expungement relief if the defendant has a specified disqualifying conviction. Subdivision (b)(4) **would have read** as follows: "All convictions for which the defendant is serving a sentence at the time the defendant successfully participates in a program as specified in subdivision (a) are subject to relief pursuant to this section, **except that incarcerated individuals who have been convicted of any of the crimes listed in paragraph (1) of subdivision (a) are automatically ineligible for relief** pursuant to this section."]

P.C. 1203.41
(Amended)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

and

(Amended)
(Ch. 814) (SB 731)
(Effective 1/1/2023)

and

(Amended)
(Ch. 842) (SB 1260)
(Section 1.5)
(Effective 1/1/2023)

SB 731: Expansion to State Prison Cases
Expands expungement/dismissal relief beyond felony cases in which a defendant was sentenced to county jail pursuant to P.C. 1170(h) (Realignment), to cases in which a defendant was sentenced to state prison, which means that defendants convicted of serious and/or violent felonies will now be able to get those convictions dismissed. The only exception for state prison cases are those in which a defendant was required to register as a sex offender.

Continues to provide that relief cannot be granted until one year after sentence completion, if the defendant was placed on mandatory supervision, and two years after sentence completion if a straight jail sentence with no supervision was imposed. State prison cases are added to this second category: A defendant sentenced to state prison cannot obtain P.C. 1203.41 relief until at least two years after sentence completion.

Continues to provide that a defendant cannot obtain relief if on mandatory supervision (and now cannot obtain relief if on parole), and cannot be serving a sentence for, on probation for, or charged with the commission of, any offense. (Postrelease community supervision—PRCS—is not mentioned, perhaps because the drafters overlooked the fact that state prison inmates are released onto parole or PRCS, depending on the crime they are convicted of. Logically, if a defendant currently on parole or mandatory supervision is not eligible for relief, then neither is a defendant currently

continued

on PRCS. It is clear that the intent of P.C. 1203.41 is that relief cannot be granted if a defendant is still being supervised, no matter what the supervision is labeled.)

Adds a new subdivision to provide that P.C. 1203.41 relief does not release the defendant from the terms and conditions of any unexpired criminal protective order issued pursuant to P.C. 136.2(i)(1) (domestic violence, sex crimes, and gang crimes), P.C. 273.5(j) (domestic violence), P.C. 368(*l*) (elder or dependent adult abuse or fraud), or P.C. 646.9(k) (stalking), all of which provide for restraining orders for up to ten years.

[SB 731 also amends P.C. 851.93 to add felonies punishable by state prison to DOJ automatic arrest record relief program. See above.]

SB 1106: Relief Cannot Be Denied Based on Unpaid Victim Restitution

SB 1106 amends P.C, 1203.41 to prohibit a court from denying a petition to expunge/dismiss a conviction on the grounds that the defendant has unpaid victim restitution or restitution fines.

Note: Before this amendment, judges had discretion to grant expungement/dismissal relief, even if a defendant had not paid full victim restitution or restitution fines. Now a judge is prohibited from considering the individual circumstances of each case on the issue of restitution.

[SB 1106 also adds similar language to P.C. 17 and other expungement statutes (P.C. 1203.4, 1203.4a, 1203.42), to a sealing statute (P.C. 1203.45), and to new P.C. 1210.6. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

SB 1260: Expands the Circumstances Under Which an Offender Granted Relief Must Continue to Disclose the Conviction

SB 1260 amends P.C. 1203.41 to add that the granting of P.C. 1203.41 relief does not relieve an offender of the obligation to disclose the conviction for enrollment as a provider of in-home support services.

P.C. 1203.42
(Amended)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

Prohibits a court from denying a petition to expunge/dismiss a conviction on the grounds that the defendant has unpaid victim restitution or restitution fines.

P.C. 1203.42 applies to cases where a defendant was convicted and sentenced to state prison before Realignment became effective on October 1, 2011, and would have been eligible for a jail sentence pursuant to P.C. 1170(h) instead of a state prison sentence, if Realignment had been in effect when the defendant was sentenced.

Note: Before this amendment, judges had discretion to grant expungement/dismissal relief, even if a defendant had not paid full victim restitution or restitution fines. Now a judge is prohibited from considering the individual circumstances of each case on the issue of restitution.

[This bill also adds similar language to P.C. 17 and other expungement statutes (P.C. 1203.4, 1203.4a, 1203.41), to a sealing statute (P.C. 1203.45), and to new P.C. 1210.6. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

P.C. 1203.425
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

and

(Amended)
(Ch. 814) (SB 731)
(Effective 1/1/2023)

and

(Amended)
(Ch. 842) (SB 1260)
(Effective 1/1/2023)

SB 731: Automatic Conviction Record Relief is Expanded to State Prison and P.C. 1170(h) Cases
Beginning July 1, 2023, expands the DOJ automatic conviction record relief program, beyond felonies for which probation was granted and completed without revocation, to also include state prison felonies and P.C. 1170(h) county jail felonies.

Excludes from this new conviction relief category, these offenses: serious felonies (P.C. 1192.7(c)), violent felonies (P.C. 667.5(c)), and felonies requiring registration as a sex offender pursuant to P.C. 290. (But a defendant who was granted probation for one of these felonies and who completed probation without revocation, would continue to be eligible for relief.)

Provides that conviction relief applies to a felony conviction that meets all of these requirements:

1. The conviction occurred on or after January 1, 2005;

continued

2. The defendant "appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease community supervision, and parole;"
3. Four years have elapsed since the date the defendant completed probation or supervision;
4. During the four years, defendant was not convicted of a new felony offense; and
5. The conviction is not a serious felony, a violent felony, or a felony that requires registration as a sex offender.

Note: It is not clear whether completion of supervision is required to have been successful, or whether supervision simply needs to have ended. There is no definition of "completed all terms" of incarceration and supervision. Would a defendant who had flash incarceration imposed or who had a supervision violation found true be eligible for relief? What if a defendant never completed a term of supervision such as a court-ordered treatment program? Unpaid victim restitution would not be a basis to deny relief based on new P.C. 1210.6, which provides that an unfulfilled order of victim restitution or restitution fines shall not be grounds for finding that a defendant did not fully comply with the sentence of the court, pursuant to the various relief statutes in P.C. 1191–1210.5. See P.C. 1210.6, below, for more information.

P.C. 1203.425 continues to provide that automatic conviction record relief is available for felony and misdemeanor convictions for which probation was granted and it appears probation was completed without revocation, and for misdemeanors and infractions where probation was not granted and it appears the sentence was completed and that at least one year has elapsed since the date of judgment.

SB 731: H&S 11350 and 11377 Convictions More than Five Years Old Cannot be Disclosed

Beginning January 1, 2023, adds that notwithstanding any other law, information relating to a conviction for a controlled substance offense listed in H&S 11350 or 11377, or former H&S 11500 or 11500.5, that is more than five years old, for which relief is granted pursuant to P.C. 1203.425, shall not be disclosed.

continued

AB 200: Courts Are Prohibited From Disclosing Dismissed Convictions
Delays, from August 1, 2022 to January 1, 2023, the date after which a court is prohibited from disclosing information about a conviction that has been dismissed pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, except to the defendant who suffered the conviction.

SB 1260: Expands the Circumstances Under Which an Offender Granted Relief Must Continue to Disclose the Conviction
SB 1260 amends P.C. 1203.425 to add that the granting of relief does not relieve an offender of the obligation to disclose the conviction for enrollment as a provider of in-home support services.

P.C. 1203.426
(New)
(Ch. 494) (AB 1803)
(Effective 1/1/2023)

Exempts a person who is receiving specified public benefits or who meets specified financial criteria, and is seeking dismissal/expungement/sealing relief pursuant to P.C. 1203.4, 1203.41, 1203.42, or 1203.45 from having to pay the $150 fee that a court, county, and city are permitted to charge for the cost of handling these petitions, whether or not they are granted.

Provides that if a defendant meets the criteria in Gov't C. 68632, the $150 fee cannot be charged. Existing Gov't C. 68632 specifies the following:

1. Persons who receive benefits from these programs: Unemployment Compensation; SSI (Supplemental Security Income); CalWORKS; Supplemental Nutrition Assistance Program; County Relief or General Assistance; Cash Assistance for the Aged, Blind, and Disabled; In-Home Supportive Services; Medi-Cal; and California Special Supplemental Nutrition Program for Women, Infants, and Children; or

2. Persons whose monthly income is 200 percent or less of the current federal poverty guidelines; or

3. Persons who are individually determined by the court to not be able to pay without using moneys that normally would pay for the common necessities of life.

continued

Note: P.C. 1203.4, 1203.41, 1203.42, and 1203.45 **already** contain provisions requiring a court to make an ability-to-pay determination for the $150 fee, and permitting a court to waive all or a part of it. A court was authorized to order payment of all or a part of the fee only if it appeared the defendant had the ability to pay without undue hardship. New P.C. 1203.426 automatically exempts a specified defendant from having to pay the $150 fee without the court being able to consider the defendant's entire financial picture. For example, a defendant who receives unemployment benefits only temporarily but has the ability to pay the $150 fee could not be required to pay it.

[P.C. 1203.4 applies to conviction dismissal/expungement relief in probation cases, P.C. 1203.41 applies to conviction dismissal/expungement relief in P.C. 1170(h) Realignment cases and state prison cases, and P.C. 1203.42 applies to conviction dismissal/expungement relief in cases in which a defendant sentenced before Realignment would have been eligible for a P.C. 1170(h) sentence had Realignment been in effect at the time. P.C. 1203.45 applies to the sealing of juvenile misdemeanor convictions.]

[*Note*: P.C. 1203.427, added by AB 1803, is **not** effective because uncodified Section 3 of the bill provides that P.C. 1203.427 will not be operative if SB 1106 is enacted and becomes operative. SB 1106 is operative, and amends number of sections (such as P.C. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.45) to prohibit a court from denying relief on the grounds that a defendant has unpaid victim restitution or restitution fines. SB 1106 also creates new P.C. 1210.6 to create a catchall prohibition on denying relief based on unpaid victim restitution and restitution fines.]

P.C. 1203.45
(Amended)
(Ch 734) (SB 1106)
(Effective 1/1/2023)

Prohibits a court from denying a petition to seal records in a juvenile case on the grounds that the defendant has unpaid victim restitution or restitution fines. Also provides that failing to pay victim restitution or restitution fines in full shall not be grounds for finding that a defendant did not fulfill the conditions of probation for the entire period of probation.

Note: Before this amendment, judges had discretion to grant relief, even if victim restitution or restitution fines were not paid in full. Now a judge is prohibited from considering

continued

the individual circumstances of each case on the issue of restitution.

[This bill also adds similar language to P.C. 17 and expungement statutes (P.C. 1203.4, 1203.4a, 1203.41, 1203.42), and to new P.C. 1210.6. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

P.C. 1203.9
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

In subdivision (a)(5), adds mandatory supervision to those types of cases (probation cases) that a court must report to DOJ when supervision is transferred from one county to another. P.C. 1203.9 transfers already applied to both mandatory supervision and probation, but subdivision (a)(5), which requires the report to DOJ, specified only probation.

P.C. 1208.2
(Amended)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Prohibits privately operated electronic home detention programs pursuant to existing P.C. 1203.016 or 1203.018, and work furlough programs pursuant to existing P.C. 1208, from charging an administrative fee or an application fee. (This section already prohibited a county-operated home detention or work furlough program from imposing an administrative fee.)

P.C. 1210.2
(New)
(Ch. 856) (AB 2294)
(Effective 9/30/2022)

Provides that if there is funding, the Board of State and Community Corrections shall award funding for a grant program to four or more county superior courts or county probation departments, in order to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.

Requires a demonstration project to use risk assessments at sentencing when a misdemeanor conviction results in a term of probation, in order to identify high-risk misdemeanants. Requires that high-risk misdemeanants be placed on formal probation with individually tailored programs, graduated sanctions, and incentives that address behavioral or treatment needs.

P.C. 1210.6
(New)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

Provides that when a court considers a petition for relief (i.e., dismissal or sealing) under Chapter One of Title 8 of Part 2 of the Penal Code (P.C. 1191–1210.5), an unfulfilled order of victim restitution or restitution fines shall not be grounds to deny relief. Also provides that an unfulfilled order of victim restitution or restitution fines shall not be grounds for finding that a defendant did not fulfill the conditions of probation for the entire period of probation; or that a defendant did not fully comply with, and perform the sentence of the court; or that a defendant has not lived an honest an upright life and has not conformed to and obeyed the laws of the land.

Examples of the relief statutes in this chapter are P.C. 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, 1203.45, 1203.47, and 1203.49.

Note: Before this amendment, judges had discretion to grant relief, even if victim restitution or restitution fines were not paid in full. Now a judge is prohibited from considering the individual circumstances of each case on the issue of restitution.

[This bill also adds similar language to P.C. 17 and to specific expungement statutes (P.C. 1203.4, 1203.4a, 1203.41, 1203.42), and to P.C. 1203.45, a sealing statute. It also repeals P.C. 11177.2, which requires that a parolee pay victim restitution in full or post a bond before being permitted to reside in another state.]

P.C. 1214.1
(Amended)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Reduces, from $300 to $100, the maximum civil assessment that a court may impose against a defendant who fails to pay all or a portion of a fine.

Continues to apply to felony, misdemeanor, and infraction cases.

Instead of going to the Trial Court Trust Fund, civil assessment money that is collected now goes to the county treasurer, for transmittal to the State Treasurer and deposit into the state's General Fund.

[This bill also amends P.C. 1465.9 (see below), to eliminate all current debt for the $300 civil assessments, by providing that the balance of any civil assessments imposed **before**

continued

July 1, 2022 is unenforceable and uncollectible and must be vacated.]

P.C. 1233.12
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Appropriates $122,829,397 in each of the 2022-23 and 2023-24 fiscal years, from the General Fund, to be used by probation departments in each county. The amounts specified for each of the 58 counties are the same amounts that were paid out to counties in the 2021-22 fiscal year pursuant to existing P.C. 1233.11.

P.C. 1269b
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Requires that a county-wide bail schedule set bail at zero dollars ($0) for any person arrested in connection with a proceeding in another state regarding the performing of, support for, aiding in the performance of, or obtaining, a lawful abortion in California.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1524, 1524.2, and 1551, and adds P.C. 1546.5 and 13778.2. See above and below.]

P.C. 1270.1
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes for which a hearing must be held in open court before the defendant may be released on bail in an amount that is either more or less than the amount in the bail schedule, or may be released on his or her own recognizance.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of 262, there may be prosecutions for violations of 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that P.C. 1270.1 still applies to 262 cases.]

P.C. 1299.01
P.C. 1299.02
P.C. 1299.04
(Amended)
(Ch. 768) (AB 2043)
(Effective 7/1/2023)

Effective July 1, 2023, makes changes to the Bail Fugitive Recovery Persons Act (bounty hunters) to conform to amendments this bill makes to a number of Insurance Code sections that, beginning July 1, 2023, require bounty hunters to be licensed.

Adds a new subdivision to P.C. 1299.02 to provide that individuals who hold a bail license, bail fugitive recovery license, bail enforcer license, bail runner license, or private investigator license from another state shall not apprehend, detain, or arrest bail fugitives in California, unless that individual obtains a bail fugitive recovery agent license in California and complies with California law.

This bill also amends Ins. C. 1800, 1801, 1802, 1802.1, 1810.7, 1810.8, 1811, 1815, and adds new Ins. C. 1802.3 to require bail fugitive recovery agents (bounty hunters) to be licensed, by adding them to the existing statutory scheme regulating other bail licensees, such as bail agents, bail permittees, and bail solicitors. Starting July 1, 2023, bounty hunters are required to take a licensing exam, to post a surety bond, to obtain liability insurance, and to complete at least 12 hours of continuing education every two years.

P.C. 1326
(Amended)
(Ch. 810) (SB 107)
(Effective 1/1/2023)

Adds a new subdivision (c) to this section on subpoenas, to prohibit health care providers from releasing medical information about a person or entity allowing a child to receive "gender-affirming health care" or "gender-affirming mental health care," in response to any foreign subpoena that is based on a violation of another state's laws that prohibit a person or entity from allowing a child to receive this kind of "health care."

[This bill also creates new P.C. 819 (see above) and amends and adds other sections in the Civil Code, Code of Civil Procedure, and Family Code. Its purpose is to prohibit California law enforcement and health care providers from cooperating with, or aiding, another state that has different laws on what medical procedures are appropriate and safe for children.]

P.C. 1346.1
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes (P.C. 261 if the victim is the spouse of the defendant, and P.C. 273.5(a)) for which the victim's testimony at the preliminary hearing may be video recorded in addition to being stenographically recorded.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that P.C. 1346.1 still applies to P.C. 262 cases.]

P.C. 1369
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Makes some revisions to this section, which sets forth the procedures for a mental competence trial.

Revises the role of a licensed psychologist with respect to antipsychotic medication for a mentally incompetent defendant by adding the following: If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, the opinion must be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. Prohibits a licensed psychologist's opinion from exceeding the scope of the license. Provides that the psychologist's opinion about the potential benefit of antipsychotic medication is not a prescription for that medication. This is in new subdivision (a)(2)(B). Subdivision (a)(2)(A) continues to require a licensed psychologist to opine whether a defendant lacks the capacity to make decisions regarding antipsychotic medication.

[Previously if a psychologist was of the opinion that antipsychotic medication was appropriate, the psychologist would inform the court that a psychiatrist should examine the defendant.]

continued

A psychiatrist's role regarding antipsychotic medication is substantially the same as it was before, and is moved from subdivision (a)(2) to new subdivision (a)(2)(C). A psychiatrist who examines the defendant and opines that treatment with antipsychotic medication is appropriate, must continue to inform the court about the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments. Subdivision (a)(2) continues to require a psychiatrist to opine whether a defendant lacks the capacity to make decisions regarding antipsychotic medication.

P.C. 1369.1
(Repealed)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Repeals this section in its entirety, which had included a county jail in the definition of "treatment facility" and permitted a county to approve a jail being designated to provide "medically approved medication" to defendants found to be mentally incompetent and not able to provide informed consent.

Existing P.C. 2603 continues to permit a county jail inmate to be treated involuntarily with psychiatric medication by a county department of mental health, or "other designated county department" if specified conditions are met.

[This bill also creates new W&I 4361.7 to provide that subject to an appropriation by the Legislature, the State Department of State Hospitals (DSH) may contract for medical, evaluation, and other necessary services, including involuntary medication, in order to facilitate early access to treatment for county jail inmates who have been deemed incompetent to stand trial on a felony charge. This new section requires county jails to allow DSH and its contractors reasonable access to incompetent inmates so that early treatment can be provided. See the Welfare & Institutions Code section of this digest more information about W&I 4361.7.]

P.C. 1370
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

and

(Amended)
(Ch. 738) (AB 204)
(Effective 9/29/2022)

Makes a number of changes to this section, which sets forth the procedures after a defendant has been found mentally incompetent. Many of the changes are noted below.

A Court Must Consider Placement in an Outpatient Treatment Program First
Adds a paragraph in subdivision (a)(2) to require, beginning July 1, 2023, that a defendant found incompetent **first** be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if any such program is available, unless, a court, based upon the recommendation of the community program director or designee, finds that either the clinical needs of the defendant or the risk to community safety warrant placement in a State Department of State Hospitals facility.

Permits a Court to Find a Mentally Incompetent Defendant Appropriate for Diversion Even After the Defendant is Transferred to a Facility
Adds a new subparagraph to P.C. 1370(a)(1)(B)(iv) to permit a court to find that a mentally incompetent defendant is appropriate for mental disorder diversion (P.C. 1001.36) even **after** being transferred to a facility.

Previously P.C. 1370(a)(1)(B)(iv) provided that at any time after a court finds that a defendant is mentally incompetent and **before** the defendant is transferred to a facility, the court may make a finding that the defendant is an appropriate candidate for mental disorder diversion. Now the court may find a mentally incompetent defendant eligible for mental disorder diversion before or after transfer to a facility.

Community-Based Residential Treatment Need Not be Secure or Locked for Specified Defendants
Amends P.C. 1370(a)(1)(B)(i) to eliminate the requirement that a community-based residential treatment system have a secure perimeter or be a locked and controlled facility.

[Continues to require that a defendant found mentally incompetent in a case involving a felony sex offense specified in P.C. 290 be delivered to a State Department of State Hospitals facility or another secure treatment facility.]

continued

Eliminates the Prohibition on a Presumption of Competency When an Expert Opines That a Defendant has Regained Competency

In subdivisions (a)(1)(G) and (a)(1)(H), eliminates the phrase "except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored." Previously in these two subparagraphs, it provided that if in the opinion of a psychiatrist, a licensed psychologist, or a DSH expert a defendant has regained competence, the court shall 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 shall not apply and a hearing shall be held to determine whether competency has been restored." This phrase prohibiting a presumption of competence and holding a hearing pursuant to P.C. 1372(a)(1) is eliminated and these subparagraphs provide instead that the court shall proceed "as if a certificate of restoration of competence has been returned pursuant to" P.C. 1372(a)(1). P.C. 1372(a)(1) continues to provide that if it has been determined that a defendant has retained mental competence, a certificate of restoration must be filed with the court by certified mail, return receipt requested, or by confidential electronic transmission.

Expands the List of Documents a Court Must Provide to a Commitment Facility

Amends subdivision (a)(3) to expand the list of documents the court must provide to a hospital or facility when it orders a defendant committed to a state hospital or a public or private treatment facility:

1. An assessment of whether involuntary treatment with antipsychotic medication is warranted;
2. All court orders authorizing involuntary treatment with antipsychotic medication;
3. A copy of any court order rejecting a certificate of restoration of competency along with a new computation of the amount of credit for time served, if any, to be deducted from the defendant's maximum term of commitment based on the rejection of the certificate;
4. Jail classification records for the defendant's current incarceration; and
5. Jail mental health records.

continued

Involuntary Administration of Antipsychotic Medication
Amends subdivision (b)(3) to provide procedures for a hearing on the involuntary administration of antipsychotic medication based on new grounds. If an order for involuntary medication was made at the time of commitment but the original grounds for it no longer exist, or if no order for involuntary medication was made at the time of commitment, and the report that is required to issue within 90 days after commitment states that there is another, or new, basis for involuntary antipsychotic medication, the court may, upon a showing of good cause, hold a hearing within 21 days to determine whether to issue a new or first-time order for involuntary medication. Requires witness testimony to occur remotely, including clinical testimony pursuant to W&I 4335.2(d) (re-evaluations by clinicians from the Department of State Hospitals of felony defendants determined incompetent to stand trial). Provides that in-person testimony shall only be allowed upon a finding of good cause.

P.C. 1370.01
(Amended)
(Ch. 319) (SB 1338)
(Section 4)
(Effective 1/1/2023)

and

(Amended)
(Ch. 735) (SB 1223)
(Section 3.5)
(Effective 1/1/2023)

Amends this section to add an additional choice the court has when a misdemeanor defendant who has been found incompetent to stand trial is found **not** eligible for P.C. 1001.36 mental disorder diversion: Refer the defendant to a CARE program pursuant to new W&I 5978. CARE stands for "Community Assistance, Recovery, and Empowerment Act." The Act creates a civil court system to evaluate and treat mentally ill people and to provide a variety of services, including mental health care, medication, and housing. [See W&I 5970–5987 in the Welfare & Institutions Code section of this digest for more information about the CARE Act.]

Requires the court to hold a CARE eligibility hearing within 14 days of the date of referral to CARE. Provides that if the hearing is delayed beyond 14 days, the court shall order the defendant, if in custody in jail, to be released on his or her own recognizance. Requires that the charges be dismissed pursuant to P.C. 1385 if a defendant is accepted into a CARE program.

P.C. 1370.01 continues to provide the court with two options when a misdemeanor defendant is found incompetent to stand trial:

continued

1. Conduct a hearing to determine if the defendant is eligible for P.C. 1001.36 mental disorder diversion; or

2. Dismiss the charges pursuant to P.C. 1385. (Continues to provide that if a defendant found mentally incompetent is on misdemeanor probation, the court is required to dismiss the pending violation of probation matter. Continues to permit the court to return the defendant to supervision and to modify probation to include appropriate mental health treatment.)

P.C. 1370.01 continues to provide that if the court holds a P.C. 1001.36 mental disorder diversion hearing and finds the defendant **not** eligible, the court may hold a hearing to determine whether to do any of the following:

1. Order modification of the defendant's treatment plan;
2. Refer the defendant to assisted outpatient treatment pursuant to existing W&I 5346;
3. Refer the defendant to the county's conservatorship investigator for possible conservatorship proceedings; or
4. As of January 1, 2023, refer the defendant to a CARE program.

[Existing P.C. 1367 provides that P.C. 1370.01 applies to defendants charged with misdemeanors and to defendants facing a violation of formal or informal probation for a misdemeanor.]

SB 1223 makes additional amendments to P.C. 1370.01 by updating cross-references to P.C. 1001.36 (mental disorder diversion), which was amended by SB 1223.

[See P.C. 1001.36, above, for more information.]

P.C. 1370.6
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Eliminates a cross-reference to P.C. 1369.1 which was repealed by this bill.

[P.C. 1370.6 pertains to treatment facility reimbursement for restoration of competency and transportation. See P.C. 1369.1, above, for more information.]

P.C. 1372
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Adds that if a court rejects a certificate of restoration, the court must base its rejection on a written report based on an evaluation, conducted by a licensed psychologist or psychiatrist, that the defendant is not competent. Requires that the evaluation be conducted after the certificate of restoration is filed with the committing court.

Requires that a copy of the written report be provided to the State Department of State Hospitals (DSH). Requires the court to provide to DSH a copy of the court order approving or rejecting the certificate of restoration.

P.C. 1385
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Expands the mitigating sentencing circumstance about prior juvenile adjudications to include a criminal conviction suffered by a juvenile that triggers an enhancement. This mitigating circumstance now applies to prior juvenile adjudications, **and** to prior criminal convictions suffered by a juvenile in adult court, that trigger an enhancement.

Existing P.C. 1385(c) lists mitigating circumstances the court is required to consider and give great weight to when deciding whether to dismiss an enhancement. The mitigating circumstance in subdivision (c)(2)(G) about the age of the defendant and juvenile priors now reads this way: "The defendant was a juvenile when they committed the current offense or any prior offenses, including criminal convictions and juvenile adjudications, that trigger the enhancement or enhancements applied in the current case."

[As was pointed out in last year's digest, a strike prior is not an enhancement, so a strike prior based on a juvenile adjudication or on a criminal conviction suffered by a juvenile prosecuted in adult court, should not be subject to P.C. 1385(c)'s bias in favor of dismissing enhancements. Numerous cases have held that the strike law is not an enhancement. Instead, 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. An example of a prior criminal conviction that **is** the basis for an enhancement is a conviction for a serious or violent felony in adult court that is charged in the current case as a five-year P.C. 667(a) enhancement.]

continued

Moves the provision about when a court may exercise its discretion to dismiss an enhancement (at sentencing, or before, during, or after trial or entry of plea) from **above** the mitigating circumstances to **below** them, so that the mitigating circumstances are now in subdivision (c)(2) instead of subdivision (c)(3).

P.C. 1387
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes (P.C. 243(e), 273.5, 273.6, and 261 where the victim is the spouse of the defendant) for which the dismissal of a case caused by the failure of the subpoenaed victim to appear, does not prevent the refiling of the charges within six months of the original dismissal.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that P.C. 1387 still applies to 262 cases.]

P.C. 1465.9
(Amended)
(Ch. 57) (AB 199)
(Effective 6/30/2022)

Adds a new subdivision (c) to provide that beginning July 1, 2022, the balance of any court-imposed civil assessments pursuant to P.C. 1214.1 that were imposed before July 1, 2022 are unenforceable and uncollectible and must be vacated. This bill also amends P.C. 1214.1 to reduce, from $300 to $100, the maximum civil assessment that may be imposed, beginning July 1, 2022, when a defendant fails to pay all or a portion of a fine.

It appears that the intention here is to eliminate all current debt for the $300 civil assessments imposed before July 1, 2022, but to permit the imposition of $100 civil assessments going forward.

continued

[In 2020, AB 1869 created P.C. 1465.9 in order to list a number of Penal Code sections for which, effective July 1, 2021, any court-imposed costs would be unenforceable and uncollectible. In 2021, AB 177 added to that list. Examples of fees that were eliminated and could no longer be ordered or collected are booking fees, public defender and appointed attorney fees, probation supervision fees, presentence report fees, and mandatory supervision fees.]

P.C. 1473
(Amended)
(Ch. 739) (AB 256)
(Section 3)
(Effective 1/1/2023)

and

(Amended)
(Ch. 982) (SB 467)
(Section 1.5)
(Effective 1/1/2023)

Racial Justice Act
AB 256 amends subdivision (f) to update the cross-reference to P.C. 745 (Racial Justice Act) so that it is to new subdivision (j) in P.C. 745, which sets forth the Act's phased-in retroactivity provisions and eliminates the requirement that judgment had to have been entered on or after January 1, 2021. Also amends P.C. 1473 to add that a defendant may appear remotely at a P.C. 745 hearing and that the court may conduct the hearing through the use of remote technology.

[See P.C. 745, above, for the amendments AB 256 makes to that section.]

Significant Dispute Regarding Expert Testimony
SB 467 makes further amendments to P.C. 1473 to add an additional ground for bringing a writ of habeas corpus: A significant dispute has emerged or further developed in the defendant's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

Provides that expert testimony includes the expert's conclusion, or the scientific, forensic, or medical facts upon which the expert opinion is based.

Provides that the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which the expert testimony was based.

Provides that a significant dispute may be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments

continued

have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which expert testimony was based.

In assessing whether a dispute is significant, requires the court to give great weight to evidence that a consensus has developed, or to evidence that there is a lack of consensus, in the relevant medical, scientific, or forensic community as to the reliability of the diagnosis, technique, methods, theories, research, or studies, upon which expert testimony was based.

Provides that the significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely, and shall not be limited to practitioners and proponents of a particular scientific or technical field or discipline.

Provides that a defendant must establish entitlement to relief by a preponderance of the evidence.

P.C. 1524
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Adds a new subdivision to provide that a search warrant shall **not** issue for any item or items that pertain to an investigation into a "prohibited violation," as defined in P.C. 629.51. P.C. 629.51 defines "prohibited violation" as providing, facilitating, obtaining, or intending or attempting to provide, facilitate, or obtain, an abortion that is lawful under California law.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1269b, 1524.2, and 1551, and adds P.C. 1546.5 and 13778.2. See above and below.]

P.C. 1524.2
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Prohibits a California corporation that provides electronic communication services from producing records in response to an out-of-state warrant if the warrant relates to an investigation into, or enforcement of, a "prohibited violation" as defined in P.C. 629.51. P.C. 629.51 defines "prohibited violation" as providing, facilitating, obtaining,

continued

or intending or attempting to provide, facilitate, or obtain, an abortion that is lawful under California law.

Also prohibits compliance with an out-of-state warrant unless the warrant includes an attestation that the evidence sought does not relate to a prohibited violation.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1269b, 1524, and 1551, and adds P.C. 1546.5 and 13778.2. See above and below.]

P.C. 1546.5
(New)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Prohibits a California corporation or a corporation with principal executive offices located in California, that provides electronic communication services, from providing records, information, facilities, or assistance pursuant to a warrant, court order, subpoena, wiretap order, pen register order, trap and trace order, or other legal process issued by another state, that relates to an investigation into or enforcement of a prohibited violation, as defined in P.C. 629.51. P.C. 629.51 defines "prohibited violation" as providing, facilitating, obtaining, or intending or attempting to provide, facilitate, or obtain, an abortion that is lawful under California law.

Authorizes the Attorney General to bring a civil action to compel compliance with this new section.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1269b, 1524, 1524.2, and 1551, and adds P.C. 13778.2. See above and below.]

P.C. 1551
(Amended)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Requires that when a person located in California is charged with the commission of a crime in another state, or was convicted and escaped from confinement, or violated the terms of supervision in that state, the filing agency must transmit electronically to the Attorney General a complete copy of the verified complaint; the out-of-state indictment, information, complaint, or judgment; the out-of-state

continued

warrant; and the affidavit upon which the out-of-state warrant was issued.

[The purpose of this amendment is so that California can determine whether the out-of-state crime relates to abortion. The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1269b, 1524, and 1524.2, and adds P.C. 1546.5 and 13778.2. See above and below.]

P.C. 1602
P.C. 1603
P.C. 1604
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Adds the independent evaluation panel created by new W&I 4360.5 to these provisions that pertain to outpatient status for mentally disordered offenders (e.g., defendants found incompetent to stand trial and defendants found not guilty by reason of insanity.)

Adds the independent evaluation panel to the list of those persons (community program directors and their designees) whose opinion about whether a defendant will or will not be a danger to others while on outpatient status, and will or will not benefit from outpatient treatment, is one of the criteria a court must consider when deciding whether to place a defendant on outpatient status.

As is required when a community program director or designee recommends outpatient status, the independent evaluation panel must prepare an evaluation and treatment plan when it recommends outpatient status.

Adds the independent evaluation panel to those entities and persons (prosecutors and defense attorneys) to whom the court must forward a recommendation for outpatient status by a state hospital or a treatment facility to which the defendant is committed, and to whom the court must give notice of the date for the court hearing on outpatient status.

[New W&I 4360.5 requires the State Department of State Hospitals (DSH) to establish a statewide panel of independent evaluators responsible for Forensic Conditional Release Program placement determinations for defendants committed to DSH who are ready to transition to community treatment settings. For more information, see W&I 4360.5 in the Welfare & Institutions Code section of this digest.]

P.C. 2084.5
(New)
(Ch. 827) (SB 1008)
(Effective 1/1/2023)

Requires state prisons, and youth residential placement or detention centers operated by CDCR to provide inmates with accessible and functional voice communication services, free of charge. Prohibits a state agency from receiving any revenue from the provision of voice communication services. The purpose of the bill is to eliminate fees for telephone calls between inmates and persons outside a detention center, and to facilitate job and house hunting.

[This bill also creates new W&I 208.1 to require free voice communication services in county or city youth residential placement or detention centers.]

P.C. 2603
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Adds inmates whose criminal proceedings are suspended pursuant to P.C. 1370 because they have been found incompetent to stand trial, and inmates who are undergoing competency proceedings, to those inmates (inmates who are in custody) for which a court hearing about whether to administer involuntary medication because of a serious mental disorder is required to be held before a judge in the superior court where the criminal case is pending.

Adds that in the case of a county jail inmate who is approved for the involuntary administration of psychiatric medication in a county jail and then is transferred to a State Department of State Hospitals facility, the approval order shall remain valid for the period ordered by the court and the facility may administer medication as needed, including on an involuntary basis, if the treating psychiatrist determines the antipsychotic medication is medically necessary and appropriate.

[P.C. 2603 permits a county jail inmate to be treated involuntarily with psychiatric medication by a county department of mental health, or "other designated county department" if specified conditions are met.]

P.C. 3003
(Repealed & Added)
(Ch. 826) (SB 990)
(Effective 1/1/2024)

Beginning January 1, 2024, expands relocation and travel options to counties other than the county of last legal residence, for inmates released from state prison onto parole or postrelease community supervision (PRCS).

continued

Requires the CDCR to release a parolee to, or permit a parolee to travel to, or permit a transfer of residency to, a county in which specified circumstances are present and verified, as long as the release, permission to travel, or residency transfer would not present a threat to public safety. Permits, but does not require, CDCR and probation departments to apply these circumstances to offenders released on PRCS. Provides that in determining an out-of-county commitment, priority is required to be given to the safety of victims, witnesses, and the community.

Requires (in the case of a parolee) or permits (in the case of an offender released on PRCS) that:

1. An inmate be released to the county where there is a verified postsecondary educational or vocational training program of the inmate's choice, or a verified work offer, or where there is verified family of the inmate, outpatient treatment, or housing.

2. An offender be granted a permit to travel outside the county of commitment to a location where the offender has postsecondary educational or vocational training program activities, including classes, conferences, or extracurricular educational activities; an employment opportunity; or inpatient or outpatient treatment.

3. An approval to transfer residency and parole to another county be granted where the offender has a verified postsecondary educational or vocational training program, a verified work offer, or where the offender has family, inpatient or outpatient treatment, or housing.

P.C. 3700
(Repealed)
P.C. 3700.5
(Amended & Renumbered to P.C. 3700)
P.C. 3701
P.C. 3702
P.C. 3703
(Repealed & Added)
P.C. 3704
P.C. 3704.5
(Repealed)
(Ch. 795) (AB 2657)
(Effective 1/1/2023)

Authorizes a death row inmate whose sentence of death has been affirmed on direct appeal, at any time before the setting of an execution date, to petition a court for relief from the death sentence on the grounds of permanent incompetence to be executed. Permits an inmate who is not found permanently incompetent to submit a new petition if there is a change in diagnosis or prognosis, or a change in the law that supports the renewed petition. Requires that the petition be verified and supported by either the opinion of a qualified expert that the inmate is permanently incompetent or medical evidence that the inmate has one or more medical or mental health conditions that would support a finding of permanent incompetence. (Existing law already provides for a sanity evaluation when an execution date is set. This amendment permits an inmate on death row to raise the issue before an execution date is set.)

Provides that "incompetent to be executed" means that, due to a mental illness or disorder, an inmate is unable to rationally understand either the punishment about to be imposed or why it is going to be imposed. Defines "permanent incompetence to be executed" as

1. being presently incompetent to be executed; **and**
2. the nature of the mental illness or disorder is such that the inmate's competence to be executed is not likely to ever be restored.

The above provisions are in P.C. 3701. Subdivision (k) of P.C. 3701 provides that it is retroactive.

This bill makes a number of other changes:

No Jury Trials
Eliminates the requirement that a jury decide whether a death row inmate is sane (now referred to as "competence to be executed.") The new version of P.C. 3701 provides that the court will decide whether an inmate is competent to be executed, no matter how the issue arises (whether the warden believes the inmate is incompetent or whether the inmate files a motion.)

Attorney General Must File a Petition if the Defense Attorney Does Not
After an execution date is set, if the warden has good cause to believe that the inmate has become incompetent

continued

to be executed, the warden is required to notify the district attorney in the county where the inmate was sentenced, the Attorney General, and the defense attorney. Requires the defense attorney to file a petition within 48 hours if the attorney has reason to believe the inmate is incompetent. If the defense attorney does not file a petition or the inmate does not have an attorney, the Attorney General is required to file the petition.

Evidentiary Provisions
Requires the court to hold a hearing on any petition filed pursuant to P.C. 3701 if there is reason to believe the inmate is presently incompetent to be executed or is permanently incompetent to be executed.

Provides that when an inmate proffers an expert opinion that the inmate is incompetent to be executed, another expert's opinion that concludes otherwise is an insufficient basis to deny a hearing.

Provides that if the court finds by a preponderance of the evidence that an inmate is competent to be executed, the court must deny the petition. (This appears to put the burden on the prosecution to prove competence rather than requiring the inmate to prove incompetence.)

Provides that if the court finds by a preponderance of the evidence that the inmate is permanently incompetent to be executed, the court must vacate the death sentence and re-sentence the inmate to life without the possibility of parole. (This appears to put the burden on the inmate to prove permanent incompetence.)

Continues to permit the district attorney to present witnesses at the hearing.

When a Court Finds an Inmate Presently Incompetent But Not Permanently Incompetent
Provides that if an inmate is found currently incompetent, but it is not found by a preponderance of the evidence that competence is unlikely to be restored, the court is required to order the warden to suspend the execution, take the inmate to a medical facility within CDCR, and keep the inmate in safe confinement until competence is restored.

continued

Provides that if the prosecuting agency alerts the court that it believes competency has been restored, the court must initiate the procedure set forth in P.C. 3700 (evaluation by three psychiatrists or psychologists) and hold a hearing. Provides that at this hearing, the prosecution has the burden of proving by a preponderance of the evidence that the inmate is competent to be executed.

When an Execution Date is Set
Current law provides that when an execution date is set, CDCR must select three psychiatrists from its staff to evaluate the inmate's sanity. This bill amends these provisions, which are now in P.C. 3700, to permit the evaluation to be done by licensed psychologists. Adds the district attorney in the county where the inmate was sentenced, the Attorney General, and the Governor to the list of people (the defense attorney) to whom the prison warden must serve a copy of the psychiatrists' or psychologists' report. Changes the term "sanity" to "competence to be executed."

[The legislative history of this bill states that ten inmates on death row have asked California courts to determine if they are permanently incompetent. Some judges have vacated death sentences while others have declined to consider the issue until an execution date is set. Uncodified Section One of this bill sets forth the Legislature's intent to "swiftly and efficiently" identify death row inmates who are permanently incompetent in order to resentence them to life without parole, and to promote finality of judgment and efficient use of scarce state resources.]

P.C. 4013
(Amended)
(Ch. 255) (AB 1974)
(Effective 1/1/1023)

Expands to state prison inmates the current process for serving a judicial paper on a jail inmate, by adding wardens to those persons (sheriffs and jailers) who, when served with a paper in a judicial proceeding that is directed to an inmate, are required to deliver the paper to the inmate forthwith and note the time the paper was served. This amendment ensures that when a state prison inmate is sued, service can be accomplished.

P.C. 4019
(Amended)
(Ch. 756) (AB 1744)
(Effective 1/1/2023)

Extends the sunset date on the current version of this conduct credit section, from January 1, 2023 to January 1, 2028, so that subdivision (i)(2) continues to provide that if probation or mandatory supervision is later revoked and sentence is imposed, conduct credits for any flash incarceration time must be applied to that sentence: "Credits earned pursuant to this section for a period of flash incarceration pursuant to Section 1203.35 shall, if the person's probation or mandatory supervision is revoked, count towards the term to be served."

[This bill also extends the sunset date for P.C. 1203(*l*), which contains a cross-reference to P.C. 1203.35, and for 1203.35, which authorizes flash incarceration, from January 1, 2023 to January 1, 2028.]

P.C. 4024.5
(New)
(Ch. 327) (AB 2023)
(Effective 1/1/2023)

Requires that county jail inmates have access to up to three free telephone calls from a telephone in the county jail in order to plan for a safe and successful release from jail. Provides that a person released from county jail for any reason is entitled to the three free telephone calls (inmates who have completed a sentence or posted bail; inmates released on their own recognizance; inmates who have been acquitted or who have had charges dismissed; and inmates ordered by a court to be released).

Requires sheriffs to make release standards, release processes, and release schedules available to a county jail inmate after a determination to release the inmate.

Requires the release standards to include information about the three free telephone calls and "the timeframe for the expedient release of a person following the determination to release that person."

P.C. 4852.01
(Amended)
(Ch. 766) (AB 1924)
(Effective 1/1/2023)

Eliminates specified requirements for convicted felons seeking a certificate of rehabilitation and pardon, who were granted probation. Previously any person convicted of a felony and granted probation was required to satisfy these requirements before filing a petition for a certificate of rehabilitation and pardon:

1. Obtain dismissal/expungement relief pursuant to P.C. 1203.4;

continued

2. Remain free of incarceration since the P.C. 1203.4 dismissal; and
3. Not be on probation for the commission of any other felony.

The above requirements are **eliminated** for persons convicted of a felony that is not a registrable sex offense, and who were granted probation. These requirements **remain in place** for defendants convicted of felonies or misdemeanors specified in P.C. 290, and who were granted probation.

Existing P.C. 4852.03 continues to require that any defendant seeking a certificate of rehabilitation satisfy at least a five-year period of rehabilitation in California.

Existing P.C. 4852.05 and 4852.06 continue to require that, before filing a petition, the petitioner must live an honest and upright life, with sobriety and industry, exhibiting good moral character, and conforming to and obeying the laws of the land.

Existing P.C. 4852.11 continues to provide that upon receiving proof of a law violation, the court may deny the petition and "determine a new period of rehabilitation."

Therefore, there continue to be statutes in place that provide grounds for a court to deny a certificate of rehabilitation and pardon, even for convicted felons who were granted probation.

[The legislative history of the bill states the process of obtaining a certificate of rehabilitation is more burdensome for defendants convicted of less serious felonies (i.e, those granted probation), than it is for defendants convicted of a felony and sentenced to state prison, or sentenced to county jail pursuant to P.C. 1170(h).]

P.C. 4900
P.C. 4902
P.C. 4904
(Amended)
P.C. 4904.5
(New)
P.C. 4905
(Repealed & Added)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

AB 200 makes changes to the process for disbursing payments to people who were erroneously convicted. Requires the California Victim Compensation Board (CalVCB) to actually approve payment to a claimant who meets the criteria for payment, if there are sufficient funds to pay the claim, instead of CalVCB simply recommending to the Legislature that the claim be paid.

Retains the payment amount of $140 per day of incarceration.

and

New P.C. 4904.5 requires CalVCB, on or before September 1 of each year, to submit an annual report to the Joint Legislative Budget Committee about the approved erroneous conviction claims that were paid in the prior fiscal year. Requires the report to list each person approved for compensation and the amount approved, along with a case summary.

P.C. 4905 is amended to eliminate the requirement that CalVCB make recommendations for payment to the Legislature, and instead provides that it is immune from liability for damages for any decision it makes pursuant to P.C. 4900–4906.

(Amended)
(Ch. 771) (AB 160)
(P.C. 4900: Sections 18 & 19)
(P.C. 4904: Sections 20 & 21)
(Effective 7/1/2024 if specified contingencies are met)

AB 160
AB 160 further amends P.C. 4900 and 4904, effective July 1, 2024, but **only if** "General Fund moneys over the multi-year forecasts beginning in the 2024-2025 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions in this section."

If the above contingencies are met, the payment to persons erroneously convicted will include $70 per day for any time served on parole or supervised release (which would include mandatory supervision, probation, and postrelease community supervision.) This means that an erroneously convicted person would receive money both for the period of incarceration and for any period of supervision. The $140 payment per day of incarceration remains the same, with the added requirement that it will be paid for each day of incarceration served "solely as a result of the former conviction."

continued

Requires that the $140 and $70 daily amounts be updated annually to reflect changes in the Bureau of Labor Statistics Consumer Price Index, West Region. Prohibits these funds from being treated as gross income for income tax purposes.

P.C. 5003.7
(Repealed & Added)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Requires CDCR to remove all inmates and close down the California Correctional Center in Susanville, no later than June 30, 2023.

P.C. 5007.4
(New)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Establishes the Delancey Street Restaurant Management Program, to be operated by CDCR in consultation with the Delancey Street Foundation. Requires the program to focus on restaurant operation, service, and hospitality. The purpose of the program is to teach marketable skills to inmates.

P.C. 5007.6
(New)
(Ch. 837) (SB 1139)
(Effective 1/1/2023)

Prohibits CDCR from charging a fee for inmates to request, review, or use their own medical records.

P.C. 5073
(New)
(Ch. 968) (AB 2526)
(Effective 1/1/2023)

Subdivision (a) provides that when the jurisdiction of an inmate is transferred from or between CDCR, the State Department of State Hospitals, and county agencies caring for inmates, the entity must disclose the mental health records of any transferred inmate who received mental health services while in the custody of the transferring facility. Provides that disclosure should be by electronic transmission when possible.

Subdivision (b) provides that mental health records shall be disclosed by and between a county correctional facility, county medical facility, state correctional facility, state hospital, or state-assigned mental health provider to ensure sufficient mental health history is available for the purpose of satisfying the requirements of P.C. 2962 for inmate evaluations (mentally disordered offenders) and to ensure the continuity of mental health treatment for a transferred inmate.

P.C. 6141
(Amended)
(Ch. 821) (SB 903)
(Effective 1/1/2023)

Adds additional responsibilities of the California Rehabilitation Oversight Board: Examine efforts by CDCR to address the housing needs of state prison inmates who are released on parole, including those who have serious mental health needs. Continues to require the Board to report annually to the Governor and the Legislature.

P.C. 6401
P.C. 6401.5
P.C. 6401.8
(New)
(Ch. 837) (SB 1139)
(Effective 1/1/2023)

Contingent upon the appropriation of funds, new P.C. 6401 requires the CDCR, at intake, to actually assist inmates in completing forms that existing laws and regulations already mandate be completed: approved visitor list, medical release of information form, medical power of attorney form, and next of kin form.

Also requires CDCR to make emergency telephone calls available for inmates who are admitted to a hospital for a serious or critical medical condition and to facilitate telephone calls between the inmate and the persons the inmate has listed on a medical release of information form.

Requires CDCR to maintain a telephone line for outside people to call to inform CDCR that a family member of an inmate has become critically ill or has died while the inmate has been hospitalized. Requires CDCR to attempt to verify the identity of the caller and the accuracy of the information, and to promptly notify the inmate.

Requires CDCR to make available emergency in-person contact visits and/or video calls when an inmate is hospitalized because of a serious or critical medical condition.

New P.C. 6401.5 requires CDCR to set up a grievance process for CDCR failures related to new P.C. 6401.

New P.C. 6401.8 provides that P.C. 6401 and 6401.5 will not be effective unless funds are appropriated.

P.C. 10008
(New)
(Ch. 802) (AB 2761)
(Effective 1/1/2023)

Requires that when a person who is in custody dies, the agency with jurisdiction over the facility must post all of the following information on its Internet website:

1. The name of the agency with custodial responsibility at the time of the death.

continued

2. The county and facility in which the death occurred.
3. The race, age, and gender of the decedent, and the date of death.
4. The custodial status of the decedent (e.g., awaiting arraignment, awaiting trial, incarcerated).
5. The manner and means of death.

Requires that the above information be posted within 10 days of the death and that updates be posted within 30 days of any change, including changes regarding the manner and means of death.

[The California State Sheriff's Association opposed this bill, pointing out that existing law already requires the death of a person in custody to be reported to the Attorney General in writing within 10 days, including all facts concerning the death, and that these writings are public records.]

P.C. 11105
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

and

(Amended)
(Ch. 814) (SB 731)
(Effective 1/1/2023)

and

(Amended)
(Ch. 842) (SB 1260)
(Effective 1/1/2023)

AB 200
Until January 1, 2023, amends subdivision (p)(2)(A) to require DOJ to disseminate all convictions against a specified applicant for employment, licensing or certification purposes, even if the conviction has been dismissed pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

SB 731 and SB 1260
Beginning January 1, 2023, the pre-6/30/2022 version of P.C. 11105(p)(2)(A) is reinstated, to require the release of dismissed convictions only to the Commission on Teacher Credentialing, and it is expanded to add school districts, county offices of education, charter schools, private schools, and state special schools for the blind and deaf, as entities that shall also receive every conviction rendered against an applicant regardless of whether relief has been granted.

Adds that, even for the Commission on Teacher Credentialing and the educational entities listed above, conviction information is prohibited from being disseminated for a controlled substance offense listed in H&S 11350 or 11377, or in former H&S 11500 and 11500.5, if it is more than five years old and relief has been granted pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

P.C. 11161.2
(Amended)
(Ch. 557) (AB 2185)
(Effective 1/1/2023)

Prohibits charging a domestic violence victim any fee for a medical evidentiary exam.

Adds strangulation to the examination protocols and adds the history of any past strangulation to the protocols for taking a victim's history. Adds that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

Adds that victims receiving a forensic medical exam for domestic violence have the right to have present a qualified social worker, a victim advocate, or a support person of the victim's choosing.

Requires hospitals, clinics, or other emergency medical facilities where medical evidentiary examinations are done, to develop and implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports and to implement a system to facilitate release of these reports as required or authorized by law.

Adds provisions for the Office of Emergency Services to reimburse entities for the cost of medical evidentiary exams for domestic violence victims.

P.C. 11163.3
P.C. 11163.4
P.C. 11163.5
P.C. 11163.6
(Amended)
(Ch. 986) (SB 863)
(Effective 1/1/2023)

Expands the scope of domestic violence death review teams to include near-death domestic violence cases, and provides that near-death reviews shall only occur after any prosecution has concluded.

Defines "near-death" as suffering a life-threatening injury, as determined by a licensed physician or licensed nurse, as a result of domestic violence.

Prohibits near-death survivors from being compelled to participate in death review team investigations. Adds that in cases of death, a victim's family members may be invited to participate but cannot be compelled to do so.

Expands the list of circumstances under which a review team may collect and analyze data:

1. The victim suffered a substantial risk of serious bodily injury or death from domestic violence.

continued

2. The circumstances of the domestic violence event indicate the perpetrator more likely than not intended to kill or seriously injure the victim.

[These sections continue to permit a county to establish an inter-agency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence death (and now near deaths), including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases.]

P.C. 11165.2
(Amended)
(Ch. 770) (AB 2085)
(Effective 1/1/2023)

Changes the definition of "general neglect" for purposes of the Child Abuse and Neglect Reporting Act by adding to the definition that the child is at substantial risk of suffering serious physical harm or illness, and by providing that general neglect does **not** include a parent's economic disadvantage.

[The legislative history of this bill asserts that reports of general neglect are often made simply because a family is poor, when there is no substantial risk of harm to the child.]

"General neglect" is now defined as: "the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred but the child is at substantial risk of suffering serious physical harm or illness. 'General neglect' does not include a parent's economic disadvantage."

P.C. 11166
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

and

P.C. 11166
P.C. 11167
(Amended)
(Ch. 770) (AB 2085)
(Effective 1/1/2023)

SB 187 makes a technical, non-substantive amendment to P.C. 11166 that pertains to the reporting of child abuse and neglect by mandated reporters, by revising the name of the "Child Welfare Services/Case Management System (CWS/CMS)" to refer instead to the "statewide child welfare information system."

[This bill also amends W&I 16501.5 to add that "Counties shall fully utilize the functionality provided by the replacement statewide child welfare information system when it has been implemented statewide."]

AB 2085 amends both P.C. 11166 and 11167 to add the word "reasonably" or "knowledge" in several places in

continued

order to clarify that the duty of a mandated reporter to report suspected child abuse is required when the abuse is known or reasonably suspected, and to be consistent with the "knows or reasonably suspects" existing language in subdivision (a) of P.C. 11166. For example, the phrase "report the instance of suspected abuse to the law enforcement agency" is changed to "report the instance of reasonably suspected abuse to the law enforcement agency." And "the information that gave rise to the reasonable suspicion of child abuse or neglect" is changed to "the information that gave rise to the knowledge or reasonable suspicion of child abuse or neglect."

P.C. 11174.34
(Amended)
(Ch. 50) (SB 187)
(Effective 6/30/2022)

Makes a technical, non-substantive amendment to this section that pertains to the coordination of state and local efforts to address fatal child abuse and neglect, by revising the name of the "Child Welfare Services/Case Management System (CWS/CMS)" to refer instead to the "statewide child welfare information system."

[This bill also amends W&I 16501.5 to add that "Counties shall fully utilize the functionality provided by the replacement statewide child welfare information system when it has been implemented statewide."]

P.C. 11177.2
(Repealed)
(Ch. 734) (SB 1106)
(Effective 1/1/2023)

Repeals this section in its entirety in order to eliminate the prohibition on a parolee who owes victim restitution or restitution fines, being permitted to reside in another state unless a bond for the restitution amount is posted. Now a parolee may be permitted to leave California, no matter how much restitution is owed and without being required to post a bond.

[This bill also amends P.C. 17 and expungement statutes (P.C. 1203.4, 1203.4a,1203.41, 1203.42), and P.C. 1203.45, a sealing statute, to provide that unpaid victim restitution or restitution fines cannot be a ground for denying a petition to reduce, expunge, or seal a conviction.]

P.C. 11411
(Amended)
(Ch. 397) (AB 2282)
(Effective 1/1/2023)

Makes a number of changes to this section that criminalizes hanging nooses, displaying Nazi swastikas, and burning crosses and other religious symbols for the purpose of terrorizing another person, by expanding the places where

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this conduct is prohibited so that they are the same for all crimes in this section, and by elevating misdemeanor crimes to felony wobbler crimes. The crimes are now in subdivisions (b), (c), and (d) instead of in (a), (b), (c), and (d). New subdivision (e) sets forth the punishment for second and subsequent convictions. New subdivision (a) now contains legislative intent distinguishing Nazi swastikas from ancient swastikas that are symbols of peace for some religions.

Amended Subdivision (b) (Nooses) (Previously in subdivision (a))
Expands the prohibition on hanging a noose on private property or on the property of a primary school, junior high school, high school, college campus, public park, or place of employment to also include **all** schools, public places, places of worship, and cemeteries.

Elevates the crime from a misdemeanor crime only, to an alternate felony/misdemeanor (a "wobbler"). A violation is now punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) and/or by a fine of up to $10,000, or by up to one year in jail and/or by a fine of up to $5,000 for a first conviction.

Pursuant to subdivision (e), a second or subsequent conviction is punishable by 16 months, two years, or three years in jail and/or by a fine of up to $15,000, or by up to one year in jail and/or by a fine of up to $10,000.

Old Subdivision (b) (Nazi Swastikas on Private Property)
This misdemeanor crime is incorporated into amended subdivision (c) and elevated to a felony/misdemeanor crime.

Amended Subdivision (c) (Nazi Swastikas and Similar Symbols)
Amended subdivision (c) eliminates the requirement that there be a pattern of conduct of placing hate symbols on private property on two or more occasions.

Instead, it is now the felony/misdemeanor crime of placing or displaying a sign, mark, or symbol, including a Nazi swastika, on the private property of another person or on the property of a school, college campus, public place, place of worship, cemetery, or place of employment for the

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purpose of terrorizing another person. It continues to be punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) and/or by a fine of up to $10,000, or by up to one year in jail and/or by a fine of up to $5,000 for a first conviction.

Pursuant to subdivision (e), a second or subsequent conviction is punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) and/or by a fine of up to $15,000, or by up to one year in jail and/or by a fine of up to $10,000.

Amended Subdivision (d) (Cross Burning)
Expands the prohibition on burning or desecrating a cross or other religious symbol on private property or on the property of a primary school, junior high school, or high school, to also include **all** schools, college campuses, public places, places of worship, cemeteries, and places of employment.

It continues to be punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) and/or by a fine of up to $10,000, or by up to one year in jail and/or by a fine of up to $5,000 for a first conviction.

Pursuant to subdivision (e), a second or subsequent conviction is punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) and/or by a fine of up to $15,000, or by up to one year in jail and/or by a fine of up to $10,000.

New Subdivision (a)
New subdivision (a) provides that it is the intent of the Legislature to criminalize the placement or display of the Nazi Hakenkreuz (hooked cross), also known as the Nazi swastika, for the purpose of terrorizing a person. Provides that this bill is **not** intended to criminalize the placement or display of the ancient swastika symbols of peace that are associated with Hinduism, Buddhism, and Jainism.

P.C. 13012.4
(New)
(Ch. 796) (AB 2658)
(Effective 1/1/2023)

Requires that information about minors placed on electronic monitoring be included in the annual report DOJ prepares pursuant to existing P.C. 13010. Requires that the report include the number of minors placed on electronic monitoring, and for each minor, the total number of days on

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electronic monitoring, the reason the minor was placed on electronic monitoring, the total number of days detained in juvenile hall for an electronic monitoring violation, and the reason the minor was detained in juvenile hall.

[This bill also creates new W&I 628.2 to grant custody credits to minors on electronic monitoring. See the Juvenile Offenders section of this digest for more information. Uncodified Section One of this bill claims that minors are frequently imprisoned in their homes, that electronic monitoring is highly restrictive, that electronic monitoring rules set up minors to fail, and that electronic monitors are visible and make buzzing or beeping sounds which result in a minor feeling shame and anxiety when away from home.]

P.C. 13016
(New)
(Ch. 899) (SB 882)
(Effective 1/1/2023)

Creates the "Advisory Council on Improving Interactions between People with Intellectual and Developmental Disabilities," in the Department of Justice, if funds are appropriated by the Legislature. Provides that the Council shall consist of nine members, including one representative from the Commission on Peace Officer Standards and Training (POST) appointed by the Governor and one representative from a law enforcement organization appointed by the Speaker of the Assembly. Requires the Council to meet quarterly starting July 1, 2023 and to submit a report to the Legislature within 24 months of the first meeting. Requires the Council to evaluate existing training on peace officer interactions with the intellectually and developmentally disabled community, and with individuals who have mental health disorders, and to make recommendations for improving the outcomes of these interactions.

P.C. 13023
(Amended)
(Ch. 852) (AB 485)
(Effective 1/1/2023)

Adds a subdivision (c) to require local law enforcement agencies to post hate crimes data on their Internet websites on a monthly basis. (This section continues to require the Attorney General to direct local law enforcement agencies to report hate crimes data to the Department of Justice "subject to the availability of adequate funding.")

P.C. 13151
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Adds mandatory supervision to those types of cases (probation cases) that a court must report to DOJ when supervision is transferred from one county to another.

continued

P.C. 1203.9 transfers from one county to another already applied to both mandatory supervision and probation, but the cross-reference to P.C. 1203.9 in 13151 specified only probation cases.

P.C. 13370
(New)
(Ch. 787) (AB 2418)
(Effective 1/1/2023)

Creates new Article 9 in Chapter 2 of Title 3 of Part 4 of the Penal Code, entitled "Justice Data Accountability and Transparency Act." Provides that the operation of this new Article is contingent upon an "adequate appropriation" by the Legislature in the annual Budget Act or another statute.

Sets forth the Legislature's intent to create a workable system of criminal justice data transparency that is consistent county-to-county so that statewide data and trends may be accurately tracked. Data will be collected from all local and state prosecutor offices (district attorneys, city attorneys and the Attorney General) and transmitted to DOJ.

By October 1, 2023
Requires DOJ to establish the Prosecutorial Transparency Advisory Board to provide guidance to DOJ on regulations and policies. Requires the Board to include these members:

1. The president of the California District Attorneys Association or a designee;
2. The Attorney General or a designee;
3. The president of the California Public Defenders Association or a designee;
4. An advisory member of the Prosecutors Alliance of California or a designee;
5. The chairperson of the Committee on Revision of the Penal Code or a designee;
6. A university professor who specializes in criminal justice data;
7. A data scientist who specializes in criminal justice data;
8. Two representatives of human or civil rights groups;
9. Two representatives of community organizations who specialize in civil or human rights and criminal justice;
10. Two representatives of tax-exempt organizations who specialize in criminal justice data;
11. Two individuals who have direct experience being prosecuted in California's legal system;
12. Two individuals who have direct experience being a victim of crime or a relative of a crime victim;
13. Two representatives of organizations that provide services to crime victims.

continued

By July 1, 2024
Requires DOJ and the Board to develop a "data dictionary" that includes standardized definitions for each data element so that data elements transmitted to DOJ are uniform across all jurisdictions.

Beginning March 1, 2027 & June 1, 2027
Requires prosecutorial agencies to collect data elements for cases beginning March 1, 2027, and on June 1, 2027 to start transmitting data to DOJ on a quarterly basis. Provides that on June 1, 2028, data transmission will be monthly.

Requires DOJ to publish the data by June 1, 2028, then on a quarterly basis for one year, and then monthly after that. Prohibits specified data from being published, such as a defendant's or victim's name.

The Data Elements Required to be Collected and Transmitted
Requires prosecutorial agencies to collect and transmit "data elements." Subdivision (e) lists 54 data elements that must be reported, including the court case number; status of the case (pending, concluded, on appeal, inactive/warrant); ZIP Code where most of the charged crimes occurred; the date of the crime; the law enforcement agency that investigated the case; the ZIP Code of the arrest; the date of the arrest; each charge, enhancement, special circumstance or special allegation referred by law enforcement; each charge, enhancement, special circumstance, or special allegation filed; the county in which the case was filed; the date the defendant entered a plea; the date the defendant first appeared in the case and whether or not an arraignment took place; the date on which bail was set and the amount; the date the first plea bargain offer was made; the terms of the initial plea bargain offer; whether the defendant was offered diversion; data about diversion, collaborative courts, sentencing, competency proceedings, and conservatorship proceedings; personal information about each defendant such as name, date of birth, race, age, gender, disability, county of residence, probation and parole status at the time of the crime; and personal information about crime victims, such as race, ethnicity, age, gender, whether the victim made a request to drop charges, and whether the victim indicated a willingness or unwillingness to testify.

P.C. 13511.1
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes technical, non-substantive amendments to delete cross-references to Gov't C. 1031.4(a), regarding peace officer education criteria. P.C. 13511.1 continues to apply to the development of a modern policing degree program. In 2021, AB 89 created both P.C. 13511.1 and Gov't C. 1031.4. An early version of the bill included peace officer education requirements in Gov't C. 1031.4(a), but the final version of the bill did not. The failure to remove from P.C. 13511.1 the cross-references to education requirements in Gov't C. 1031.4 was an oversight. This year's SB 1493 removes them.

P.C. 13660
(New)
(Ch. 945) (AB 1406)
(Effective 1/1/2023)

Requires a law enforcement agency that authorizes peace officers to carry an electroshock device (e.g., a taser or stun gun) to prohibit the device from being holstered or carried on the same side of the body as the officer's primary firearm is carried.

The purpose of this bill is to reduce "weapon confusion," whereby an officer intends to use a taser or stun gun but mistakenly draws a firearm instead.

P.C. 13680
P.C. 13681
P.C. 13682
P.C. 13683
(New)
(Ch. 854) (AB 655)
(Effective 1/1/2023)

Creates new Title 4.9 in Part 4 of the Penal Code, entitled "California Law Enforcement Accountability Reform Act."

Background Investigations of Peace Officer Candidates (P.C. 13681)
Requires that any background investigation into a candidate for a peace officer position include an inquiry into whether the candidate has engaged in or is engaging in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate. Prohibits an agency from hiring a candidate who in the past seven years, and since age 18, has been a member of a hate group, or has participated in a hate group activity, or has advocated public expressions of hate.

Definitions (P.C. 13680)
Defines "hate group" as an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes.

Defines "hate crime" with a cross-reference to existing P.C. 422.55. P.C. 422.55 defines a hate crime as

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1. A criminal act, committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim–disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group that has one or more of these actual or perceived characteristics; or

2. A violation of P.C. 422.6:

    a. Willfully injuring, intimidating, or threatening another person in the free exercise or enjoyment of any right or privilege secured by the California or United State Constitutions, or by California or U.S. laws, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in P.C. 422.55; or

    b. Defacing, damaging, or destroying the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured by the California or United State Constitutions, or by California or U.S. laws, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in P.C. 422.55.

Defines "public expression of hate" as any statement or expression to another person, including in an online forum, that explicitly advocates for, explicitly supports, or explicitly threatens to commit genocide or any hate crime, or that explicitly advocates for or explicitly supports any hate group.

Investigations of Currently Employed Peace Officers (P.C. 13682)
Requires an agency that employs peace officers to investigate any internal complaint or a complaint from a member of the public that alleges, with sufficient particularity to investigate, that a currently employed peace officer has in the previous seven years and since age 18, engaged in membership in a hate group, participated in a hate group activity, or advocated public expressions of hate.

Requires that if the complaint is sustained, the agency remove the peace officer "from appointment."

continued

Sustained Findings are Not Confidential
(P.C. 13683)
Provides that notwithstanding P.C. 832.7 (confidentiality of peace officer personnel records) and Gov't C. 6254(f) (part of the Public Records Act—records of complaints to, or investigations conducted by, law enforcement) a sustained finding is **not** confidential and shall be made available for public inspection. Permits the disclosure of a sustained finding to be redacted to preserve the anonymity of complainants and witnesses; to remove personal data; to protect confidential medical or financial information; or where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer or another person.

[*Note*: As of January 1, 2023, Gov't C. 6254(f) is renumbered to Gov't C. 7932.600–7923.625. Legislation enacted in 2021 renumbered the entire California Public Records Act, effective January 1, 2023. See the Government Code section of this digest for more information.]

P.C. 13750
(Amended)
(Ch. 20) (AB 2137)
(Effective 1/1/2023)

Requires family justice centers to provide clients with educational materials about gun violence restraining orders, domestic violence restraining orders, and other legal avenues of protection for victims and their families, if appropriate.

[Family justice centers assist victims of domestic violence, sexual assault, elder and dependent adult abuse, and human trafficking with needed services in one location.]

P.C. 13777
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Adds district attorneys and city attorneys to those groups (law enforcement agencies) that the Attorney General is required to direct to provide information about anti-reproductive-rights crimes on an annual basis to DOJ "in a manner that the Attorney General prescribes." The type of information to be provided by district attorneys and city attorneys is the total number of cases in which a person was charged with a violation of P.C. 423.2. (P.C. 423.2 includes various misdemeanor crimes against reproductive health services providers and patients; intentionally damaging or destroying the property of a place of worship; and obstructing, injuring, intimidating, or interfering with a

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person lawfully exercising the First Amendment right of religious freedom at a place of religious worship.)

Does not specify when this information is to be supplied. Delays the due date of the Attorney General's first annual report to the Legislature from January 1, 2023 to January 1, 2025. Permits the Attorney General to distribute the report electronically.

P.C. 13778.2
(New)
(Ch. 627) (AB 1242)
(Effective 9/27/2022)

Prohibits a law enforcement officer from knowingly arresting a person for performing, supporting, aiding in the performance of, or obtaining a lawful abortion in California.

Prohibits a public employee from cooperating with or providing any information to another state, or, to the extent provided by federal law, to a federal law enforcement agency, regarding an abortion that is lawful in California and performed in California.

Provides that the law of another state that authorizes civil or criminal penalties related to performing, supporting, aiding, or obtaining a lawful abortion in California, is against public policy.

Prohibits a state court, judicial officer, court employee, or "authorized attorney" from issuing a subpoena in connection with a proceeding in another state regarding a person performing, supporting, aiding, or obtaining a lawful abortion in California.

Permits the investigation of criminal activity in California that may involve abortion, provided that information relating to a medical procedure performed on a specific person is not shared with an agency or individual from another state for the purpose of enforcing another state's abortion law.

[The goal of the bill is to prohibit cooperating with, or providing information to, a law enforcement agency in another state that has different abortion laws. This bill also amends P.C. 629.51, 629.52, 638.50, 638.52, 1269b, 1524, 1524.2, and 1551, and adds P.C. 1546.5. See above.]

P.C. 13899
(Amended)
(Ch. 105) (AB 1653)
(Effective 1/1/2023)

Specifically adds the "theft of vehicle parts and accessories" to the property crimes specified in this section (organized retail theft and vehicle burglary). P.C. 13899 continues to authorize regional property crimes task forces to operate in counties identified by the California Highway Patrol as having elevated levels of property crime, including, but not limited to, organized retail theft, vehicle burglary, and now, the theft of vehicle parts.

According to the legislative history of this bill, its purpose is to have these property crime task forces prioritize the theft of catalytic converters, because this type of theft has skyrocketed over the last few years.

P.C. 14306
P.C. 14307
P.C. 14308
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Makes several changes to these three sections that deal with funding for environmental training and enforcement. Among other things, amends P.C. 14308 to add community-based nonprofit organizations:

1. Specifically adds community-based nonprofit organizations to the list of entities (public prosecutors, peace officers, firefighters, and state and local environmental regulators) that may be trained in the investigation and enforcement of environmental laws by grants that are awarded to public and private entities.

2. Adds community-based nonprofit organizations to those entities (local environmental regulators) that may be awarded grants for the enforcement of environmental laws.

3. Provides that grants awarded to community-based nonprofit organizations may be used to address environmental violations that occur in, or disproportionately impact, disadvantaged communities.

P.C. 16515
P.C. 16517
P.C. 16519
(New)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Adds definitions for "federal licensee authorized to serialize firearms," "federally licensed manufacturer or importer," and "federally regulated firearm precursor part." These three new sections are part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts. A ghost gun is a firearm that does not have a serial number and that is typically assembled by the user from purchased or homemade components.

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P.C. 16515 defines "federal licensee authorized to serialize firearms" as a person, firm, or entity holding a valid federal firearms license that authorizes the imprinting of serial numbers onto firearms.

P.C. 16517 defines "federally licensed manufacturer or importer" as a person, firm, or entity holding a valid license to manufacture or import firearms.

P.C. 16519 defines "federally regulated firearm precursor part" as any firearm precursor part deemed to be a firearm pursuant to federal law, and if required, has been imprinted with a serial number by a federal licensee authorized to serialize firearms in compliance with all applicable federal laws and regulations.

P.C. 16520
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Expands the definition of "firearm" for the purposes of numerous specified firearms provisions to include firearm precursor parts, and expands the list of Penal Code, Code of Civil Procedure, and Welfare & Institutions Code sections involving firearms that it applies to.

New Definition of Firearm in P.C. 16520(b)
Provides that a firearm includes the frame or receiver of the weapon, including both a completed frame or receiver, **and a firearm precursor part**. (Examples of firearm precursor parts include unfinished firearm frames and receivers.) Previously the definition of firearm was that it included the frame or receiver of a weapon.

Numerous Existing Firearm Crimes Now Apply to Firearm Precursor Parts
The expansion of the definition of "firearm" to include firearm precursor parts has expanded the scope of a number of crimes relating to firearms, including these:

1. A person in possession of only a precursor part, such as an unfinished firearm frame or receiver, who is prohibited from having firearms because of a felony conviction, a specified misdemeanor conviction, a probation condition, or a restraining order can be charged with a felony crime in P.C. 29800, 29805, 29815, or 29825.

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2. Firearm precursor parts can now be the subject of a gun violence restraining order (P.C. 18100–18205) or seized at the scene of a domestic violence incident (P.C. 18205–18500).

3. Firearm precursor parts are subject to laws relating to licenses to sell or transfer firearms (P.C. 26500–26590), gun shows (P.C. 27200–27415), and the sale, lease, transfer, or delivery of firearms (P.C. 27500–28000).

   [See P.C. 16531, below, for the revised definition of "firearm precursor part."]

Expands the List of Crimes That the P.C. 16520(b) Definition of "Firearm" Applies To
Adds a number of sections that the new "firearm" definition applies to, including P.C. 136.2 (protective orders), P.C. 646.91 (emergency protective order against stalking), P.C. 23900–23925 (prohibiting the obliteration of identification marks or numbers on firearms), 27200–27350 (gun shows), new P.C. 29185 (misdemeanor crimes involving the use or sale of computer numerical (CNC) milling machines, which are used to manufacture firearms), C.C.P. 527.6–527.9 (restraining orders prohibiting harassment, workplace violence, and violence at schools, which subject the restrained person to a firearms prohibition), and W&I 15657.03 (elder and dependent adult protective orders).

[According to the legislative history, the bill conforms California definitions relating to firearms to new federal firearms regulations promulgated by the Bureau of Alcohol, Tobacco, and Firearms (ATF). Among other things, the federal rule includes a weapon parts kit in the definition of "firearm."]

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 16531
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Revises the definition of "firearm precursor part" to provide as follows: a forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public

continued

to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted.

Previously "firearm precursor part" was defined as a component of a firearm that is necessary to build or assemble a firearm and that is either an unfinished receiver or an unfinished handgun frame.

This bill also amends P.C. 16520 to include firearm precursor parts in the definition of "firearm."

[According to the legislative history, the bill conforms California definitions relating to firearms to new federal firearms regulations promulgated by the Bureau of Alcohol, Tobacco, and Firearms (ATF). Among other things, the federal rule includes a weapon parts kit in the definition of "firearm."]

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 16532
(Repealed)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Repeals this section, which had provided a definition of "firearm precursor part vendor" that cross-referenced P.C. 30485. This bill also repeals P.C. 30485–30495, which dealt with firearm precursor part vendor licenses.

This bill also repeals most of AB 879 (2019) (P.C. 30400–30495, see below), which had enacted a regulatory framework for firearm precursor parts, and required, among other things, that firearm precursor parts be sold through a licensed vendor. Most of the sections had a delayed effective date of July 1, 2022.

Because firearm precursor parts are now included in the definition of "firearm" (see P.C. 16520, above), separate provisions for firearm precursor parts vendors are no longer required because the sale or transfer of firearms, which now includes precursor parts, must generally be done through licensed firearm dealers pursuant to existing statutes.

[This is part of a lengthy bill dealing with un-serialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 17312
(New)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Adds a definition of "valid state or federal serial number or mark of identification:"

1. A serial number that has been imprinted by a federal licensee authorized to serialize firearms in accordance with federal law, or that has been assigned to a firearm; or
2. A serial number or mark of identification issued by DOJ pursuant to P.C. 23910 or 29180.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 18005
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Requires the destruction of weapons surrendered to law enforcement (including firearms), and eliminates provisions that had permitted law enforcement to sell at public auction to specified persons, weapons that had value for sporting, recreational, or collection purposes. A new subdivision (d) is added to provide that if a weapon is evidence in a criminal case, it must be retained as required by P.C. 1417–1417.9 (which pertain to the disposition of evidence in criminal cases.)

P.C. 18010
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Adds the unlawful transfer of a firearm precursor part to those activities (the unlawful importation or sale of a precursor part) that a district attorney, city attorney, or the Attorney General is authorized to bring an action to enjoin.

Adds unlawfully possessed or transferred firearm precursor parts to those precursor parts (unlawfully imported or sold precursor parts) that are a nuisance and are subject to confiscation and destruction.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 18122
(Amended)
(Ch. 420) (AB 2960)
(Effective 7/1/2023)

Makes some modifications to this section regarding the electronic filing of gun violence restraining order petitions.

Continues to require that beginning July 1, 2023, a court must permit the electronic filing of petitions for gun violence

continued

restraining orders and temporary gun violence restraining orders.

Requires the court to act on these filings consistent with P.C. 18150—on the same day the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

Requires that documents (e.g., notice of the court date, copies to serve on the respondent, temporary restraining order) be provided to the petitioner electronically, unless the petitioner, at the time of electronic filing, notes that the documents will be picked up from the court.

Deletes provisions requiring a court to post a telephone number on its Internet website and to staff that telephone during normal business hours, so that the public can call to obtain information about electronic filing. Instead, adds a requirement that information about electronic filing and access to a court's self-help center be prominently displayed on each court's homepage. Requires also that each self-help center make available information about gun violence restraining orders.

P.C. 18123
(Amended)
(Ch. 420) (AB 2960)
(Effective 1/1/2023)

Deletes the provision requiring a court to post a telephone number on its Internet website and to staff that telephone thirty minutes before the start of a court session and during the court session, so that the public can call to obtain assistance regarding remote appearances.

Continues to permit a party or a witness to appear remotely at the hearing on a petition for a gun violence restraining order. Continues to require each court to develop local rules and instructions for remote appearances and to post them on its Internet website.

P.C. 18150
P.C. 18170
P.C. 18190
(Amended)
(Ch. 974) (AB 2870)
(Effective 1/1/2023)

Expands the categories of people who may file a petition requesting that the court issue an ex parte gun violence restraining order (P.C. 18150), a gun violence restraining order after notice and hearing (P.C. 18170), and a renewal of a gun violence restraining order (P.C. 18190). Also expands and limits some existing categories.

continued

Adds these two categories:

1. An individual who has a dating relationship with the subject of the petition.
2. An individual who has a child in common with the subject of the petition, if there have been substantial and regular interactions for at least one year.

Expands the existing "immediate family member" category by changing the definition **from** a cross-reference to P.C. 422.4(b)(3) **to** this definition: "any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year." (The expansion here is to third and fourth degree relationships where there were substantial interactions for at least one year. Examples include aunts, uncles, nieces, nephews, and first cousins. There appears to be some disagreement about the definition of a second-, third-, and fourth-degree relationship. Online research yields different definitions. But Prob. C. 13 specifies siblings as second-degree relationships; aunts, uncles, nieces, and nephews as third-degree relationships; and first cousins as fourth-degree.]

Limits the roommate category to roommates who have had substantial and regular interactions with the subject for at least one year. Previously persons who regularly resided in the subject's household, or who, within the prior six months, regularly resided in the household, were included in the definition of "immediate family" because of the cross-reference to P.C. 422.4(b)(3). (P.C. 422.4(b)(3) specifies spouses; domestic partners; parents; children; any person related within the second degree; and any person regularly residing in the household, or who, within the prior six months, regularly resided in the household.)

This bill eliminated that cross-reference, listed roommates as a separate category, and added this definition of roommate: "a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year."

P.C. 18275
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Amends this section regarding the sale or destruction of firearms or weapons taken into custody by law enforcement at the scene of a domestic violence incident, to eliminate the authority to sell the firearm or weapon. Now any firearm or weapon taken pursuant to P.C. 18275 that is held by law enforcement for more than 12 months and is considered a nuisance, must be destroyed.

P.C. 23910
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Authorizes, instead of requires, DOJ to assign a distinguishing number or mark to a firearm, upon request, when the number or mark on the firearm has been destroyed or obliterated.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 23920
(Amended)
(Ch. 76) (AB 1621)
(Effective 1/1/**2024**)

In new subdivision (b), adds the new misdemeanor crime of knowingly possessing any firearm, on or after January 1, *2024,* that does not have a valid state or federal serial number or mark of identification. Since no particular punishment is specified, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

See P.C. 23925, below, for the exceptions to this new crime, including applying to DOJ before January 1, 2024 for a unique serial number or identification mark. (Existing law in P.C. 29180, already requires anyone manufacturing or assembling a firearm to apply to DOJ for a unique serial number or identification mark.)

[The existing misdemeanor crime in this section of buying, receiving, selling, or possessing a firearm with knowledge that the name of the maker, the model name, or the manufacturer's number or mark of identification has been altered, removed, or obliterated, is designated as subdivision (a).]

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 23925
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Sets forth a number of exceptions to the new misdemeanor crime in P.C. 23920(b) (see above) of knowingly possessing any firearm, on or after January 1, *2024,* that does not have a valid state or federal serial number or mark of identification.

The exceptions:

1. The possession of a firearm that was made or assembled before December 16, 1968 and is not a handgun.

2. The possession of a firearm that has been entered, before July 1, 2018, into the P.C. 11106 centralized firearm registry, as being owned by a specific individual or entity, if the firearm has assigned to it a distinguishing number or mark of identification because DOJ accepted entry of that firearm into the registry.

3. The possession of a firearm that is a curio or relic, or an antique firearm.

4. The possession of a firearm by a federally licensed firearms manufacturer or importer (defined in new P.C. 16517), or any other federal licensee authorized to serialize firearms.

5. The possession of a firearm by a person who, before January 1, 2024, has applied to DOJ for a unique serial number or mark of identification pursuant to P.C. 29180, and fully complies with that section, including imprinting the serial number or mark onto the firearm within 10 days after receiving the number or mark from DOJ.

6. The possession of a firearm by a new resident who, pursuant to P.C. 29180, applies for a unique serial number or mark of identification from DOJ within 60 days of arrival in California, and fully complies with that section, including imprinting the number or mark onto the firearm within 10 days of receiving it from DOJ.

   Provides that the good faith effort by a new resident to apply for a unique serial number or mark of identification after the 60-day period specified above, or any other person's good faith effort to apply for a serial number or mark, shall not constitute probable cause for a violation of P.C. 23920.

continued

7. The possession of a firearm by a nonresident who is traveling with a firearm in California in accordance with the provisions of 18 U.S.C. 926A, or who possesses or imports a firearm into California exclusively for use in an organized sport shooting event or competition. (18 U.S.C. 926A requires a firearm to be unloaded during transportation, and requires that the ammunition and firearm not be readily accessible or directly accessible from the passenger compartment of the transporting vehicle, or be in a locked container other than the glove compartment or console.)

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 26720
(Amended)
(Ch. 138) (AB 228)
(Effective 1/1/**2024**)

Beginning January 1, 2024, requires DOJ to conduct inspections of firearms dealers at least once every three years in order to ensure compliance with a variety of specified firearms laws. (Current law simply **permits** DOJ to conduct inspections.) Requires that these mandatory inspections include an audit of dealer records: a sampling of 25 to 50 percent of each record type.

According to the legislative history of this bill, the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has primary responsibility for firearm dealer inspections, but its resources are limited, and therefore firearm dealers are being inspected only once every 7–10 years.

P.C. 26806
(New)
(Ch. 995) (SB 1384)
(Effective 1/1/**2024**)

Beginning January 1, 2024, requires licensed firearms dealers to install and monitor a digital video and audio surveillance system for their premises that covers interior views of all entries and exits, all firearm displays, all points of sale, and records continuously 24 hours per day. Requires recordings to display the date and time, and to be kept for at least one year. Requires dealers to post signs that the premises are under audio and video surveillance.

Requires the cameras to reasonably produce recordings that allow for the clear identification of any person.

Prohibits dealers from allowing access to the system or from releasing recordings, except in these circumstances:

continued

1. A DOJ agent or a licensing authority conducting an inspection of the premises, for the purpose of ensuring the surveillance system is in compliance, if a warrant or court order would not generally be required for this access;

2. Pursuant to a search warrant or court order; or

3. In response to an insurance claim or as part of the civil discovery process in response to subpoenas, requests for production, or court orders.

[This bill also amends P.C. 26715 to require DOJ to remove from its centralized list of licensed firearms dealers any dealer who fails to provide annual certification that the required video surveillance system is in proper working order.]

P.C. 26811
(New)
(Ch. 995) (SB 1384)
(Effective 7/1/2023)

Beginning July 1, 2023, requires licensed firearms dealers to carry a general liability insurance policy providing at least $1 million of coverage per incident. Provides that this new section does not preclude a local authority from requiring more insurance.

P.C. 26835
(Amended)
(Ch. 76) (AB 1621)
(Effective 1/1/**2024**)

Beginning January 1, 2024, changes the wording of the warning firearms dealers are required to display within their premises. Instead of stating that only one handgun or semiautomatic centerfire rifle may be purchased within a 30-day period, the warning must state that only one firearm may be purchased within a 30-day period.

This amendment conforms the required warning to the amendment made by this bill to P.C. 27535. Beginning January 1, 2024, P.C. 27535 prohibits making an application to purchase more than one firearm within a 30-day period, instead of prohibiting making an application to purchase more than one handgun or semiautomatic centerfire rifle within a 30-day period. See more on P.C. 27535, below.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 26883
(New)
(Ch. 141) (AB 1842)
(Effective 1/1/2023)

Prohibits a firearms seller from charging a re-stocking fee or other return-related fee of more than five percent of the purchase price of the firearm if the buyer decides to cancel the firearm purchase during the 10-day waiting or "cooling off" period, unless the firearm is a special-order firearm.

P.C. 27240
P.C. 27245
P.C. 27305
P.C. 27310
P.C. 27350
(Amended)
(Ch. 696) (AB 2552)
(Effective 1/1/2023)

Makes a number of changes regarding gun shows.

P.C. 27240 (Signs at Gun Shows)
Adds additional notice requirements for signs posted at the public entrance of a gun show or event, which are the same notices that licensed gun dealers are already required to post in their premises pursuant to existing P.C. 26835:

1. Firearms must be handled responsibly and securely stored.

2. Children may be unable to distinguish firearms from toys.

3. You may be guilty of a misdemeanor if you keep a firearm where a minor is likely to access it, or if a minor obtains and improperly uses it, or carries if off of the premises.

4. If you negligently store or leave a firearm where a person under age 18 is likely to access it, you may be guilty of a misdemeanor.

5. Discharging firearms in poorly ventilated areas, cleaning firearms, or handling ammunition may result in exposure to lead.

6. Federal regulations require that if you do not take possession of a firearm you are acquiring ownership of within 30 days after you complete the initial background check paperwork, you must complete the background check process a second time.

7. No person shall make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period and no delivery shall be made to a person who has made multiple applications.

continued

8. If a firearm you own or possess is lost or stolen, you must report the loss or theft to a local law enforcement agency within five days.

P.C. 27245 (Fines and Ineligibility for a License)
Increases the maximum fine, from $2,000 to $4,000, for the misdemeanor crime of a gun show producer willfully failing to comply with laws relating to gun shows (P.C. 27200–27240), except for the posting of required signs. Increases, from one year to two years, the length of time a gun show producer is not eligible for a gun show license after a conviction.

Increases the maximum fine, from $1,000 to $2,000, for a first offense, and from $2,000 to $4,000 for a second or subsequent offense, for the willful failure of a gun show producer to post required signs. Increases, from one to two years, the length of time a gun show producer is not eligible for a gun show license after a second or subsequent conviction.

P.C. 27305 (Gun Show Vendor Certifications)
Adds two additional actions that gun show vendors must certify in writing to a gun show producer that they will **not** do:

1. Display, possess, or offer for sale an unserialized finished or unfinished frame or receiver; and
2. Display, possess, or offer for sale an attachment or conversion kit designed to convert a handgun into a short-barreled rifle or into an assault weapon.

P.C. 27310 (Firearm Precursor Parts & DOJ Inspections)
Adds firearm precursor parts to the list of items (firearms and ammunition) whose transfer or sale at a gun show must be conducted in accordance with state and federal law. Adds firearm precursor part vendors to those persons (firearms dealers, ammunition vendors, manufacturers) that DOJ may inspect at a gun show to ensure compliance with state and federal laws.

Beginning July 1, 2023, requires DOJ to annually conduct enforcement and inspection of a minimum of one-half of all gun shows or events in California. Requires DOJ to post violations of state and federal law on its Internet website for 90 days after an inspection. Requires, by May 1, 2024, and annually thereafter, that DOJ submit a report to the Legislature summarizing enforcement efforts.

continued

P.C. 27350 (Violations of the Gun Show Enforcement and Security Act)
Amends subdivision (b) to specify that the misdemeanor punishment for a second or subsequent violation of the Gun Show Enforcement and Security Act of 2000 (P.C. 27300–27345) is up to six months in jail and/or a fine of up to $1,000. (This is a technical, non-substantive amendment. Previously subdivision (b) of P.C. 27350 simply provided that a second or subsequent violation is a misdemeanor and existing P.C. 19 detailed the punishment. P.C. 19 continues to provide that unless a different punishment is prescribed, every offense declared to be a misdemeanor is punishable by up to six months in jail and/or by a fine of up to $1,000.)

Adds that DOJ shall prohibit a defendant convicted of a second or subsequent violation from participating as a vendor at any gun show for one year.

Amends subdivision (c) to provide that the misdemeanor punishment for a first knowing violation of the Gun Show Enforcement and Security Act of 2000 (P.C. 27300–27345) is up to six months in jail and/or by a fine of up to $2,000. Adds that a convicted defendant shall be prohibited from participating as a vendor at any gun show for one year. (Previously subdivision (c) provided only that a first knowing violation is a misdemeanor.)

Subdivision (a) continues to provide that a first violation of P.C. 27300– 27345, except a knowing violation, is an infraction.

P.C. 27510
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Adds completed firearm frames, completed firearm receivers, and firearm precursor parts to those items (firearms that are not handguns, and semiautomatic centerfire rifles) that may be sold, delivered, or given to a person age 18 who possesses a valid hunting license, even if that person is under age 21.

[P.C. 27510 prohibits a firearms dealer from selling, delivering, or giving a firearm to any person under age 21, but specifies a number of exceptions, such as for persons who are at least age 18 and have a valid hunting license.]

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 27530
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Expands this crime of selling or transferring ownership of a handgun that does not have a manufacturer's name and serial number, or a number or mark assigned by DOJ, to apply to all firearms, and requires that the firearm bear a serial number imprinted by a federal licensee authorized to serialize firearms.

[New P.C. 16515, created by this bill, defines "federal licensee authorized to serialize firearms" as a person, firm, or entity holding a valid federal firearms license that authorizes the person, firm, or entity to imprint serial numbers onto firearms.]

Sets forth a number of exceptions:

1. A firearm that was made or assembled before December 16, 1968 and is not a handgun.

2. A firearm that is a curio or relic, or an antique firearm.

3. A firearm that has been entered, before July 1, 2018, into the P.C. 11106 centralized firearm registry, as being owned by a specific individual or entity, if the firearm has assigned to it a distinguishing number or mark of identification because DOJ accepted entry of that firearm into the registry.

4. A firearm that is transferred, surrendered, or sold to a law enforcement agency.

5. A firearm that is sold or transferred to a federally licensed firearms manufacturer or importer or to any other federal licensee authorized to serialize firearms.

Pursuant to existing P.C. 27590, P.C. 27530 is a misdemeanor/felony crime. It may be charged as a felony if the defendant has a specified prior conviction, or is a person prohibited from having a firearm because of a specified felony or misdemeanor conviction, or is an active criminal street gang member.

[This is part of a lengthy bill dealing with un-serialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 27535
(Amended)
(Ch. 76) (AB 1621)
(Effective 1/1/**2024**)

Expands this infraction/misdemeanor crime of making an application to purchase more than one handgun or semiautomatic centerfire rifle within a 30-day period, to prohibit, beginning January 1, 2024, making an application to purchase more than **one firearm** within a 30-day period. Adds that this section does not authorize a person to make an application to purchase a combination of firearms, completed firearm frames, completed firearm receivers, or firearm precursor parts within the same 30-day period.

[P.C. 16520, also amended by this bill, expands the definition of "firearm" to provide that it includes the frame or receiver of a firearm, a completed firearm frame, a completed firearm receiver, or a firearm precursor part.]

Pursuant to existing P.C. 27590(e), a first violation of P.C. 27535 is an infraction punishable by a fine of $50, a second violation is an infraction punishable by a fine of $100, and a third or subsequent violation is a misdemeanor. (Since no misdemeanor punishment is specified, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.)

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 27540
(Amended)
(Ch. 76) (AB 1621)
(Effective 1/1/**2024**)

Expands the prohibition on a firearms dealer delivering a handgun or semiautomatic centerfire rifle to a person who made an application within 30 days to purchase another handgun or semiautomatic centerfire rifle, to prohibit, beginning January 1, 2024, the delivery of any firearm when the dealer is notified by DOJ that the purchaser made another application within 30 days to purchase a handgun, a semiautomatic centerfire rifle, a completed firearm frame, a completed firearm receiver, or a firearm precursor part.

Existing P.C. 27590 provides that a violation of P.C. 27540 is a misdemeanor/felony crime. It may be charged as a felony if the defendant has a specified prior conviction, or is a person prohibited from having a firearm because of a specified felony or misdemeanor conviction, or is an active criminal street gang member.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 27573
(New)
(Ch. 145) (SB 915)
(Effective 1/1/2023)

Prohibits gun shows on state property by prohibiting the sale of any firearm, firearm precursor part, or ammunition on state property, in buildings that sit on state property, or on property leased, occupied, or operated by California. Includes a few exceptions, such as gun buyback events held by law enforcement, the purchase of firearms, parts, or ammunition by a law enforcement agency in the course of its regular duties, and a sale that occurs pursuant to a contract entered into before January 1, 2023.

Pursuant to existing P.C. 27590, a violation of new P.C. 27573 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800–29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County. P.C. 27575 was created by SB 264 in 2021, and became effective January 1, 2022.

P.C. 27575.1
(New)
(Ch. 140) (AB 1769)
(Effective 1/1/2023)

Prohibits gun shows at the Ventura County Fair and Event Center in Ventura County by prohibiting the sale of any firearm, firearm precursor part, or ammunition at that location. Includes a few exceptions, such as gun buyback events held by law enforcement, and the purchase of ammunition by a law enforcement agency in the course of its regular duties.

Pursuant to existing P.C. 27590, a violation of new P.C. 27575.1 is a misdemeanor or a felony crime.

It is a felony punishable by two, three, or four years in county jail pursuant to P.C. 1170(h), if there are specified

continued

circumstances, including these: The defendant has a specified prior conviction related to firearms; or is a person prohibited from having firearms (P.C. 29800 29875); or has a specified prior conviction for a violent felony (P.C. 29900–29905); or is receiving treatment for a mental disorder (W&I 8100); or has been adjudicated to be a danger to self or others because of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender (W&I 8103); or is a person who actively participates in a P.C. 186.22 criminal street gang.

This new section is modeled after existing P.C. 27575, which prohibits gun shows on the grounds of the Orange County Fair and Event Center in Orange County.

P.C. 29010
(Amended)
(Ch. 142) (AB 2156)
(Effective 1/1/2023)

Revises the misdemeanor crime of manufacturing 50 or more firearms per year by reducing the number to a maximum of three firearms. Subdivision (a) is now the misdemeanor crime of manufacturing more than three firearms within a calendar year, if the person or business does not also hold a California state firearms manufacturing license.

Creates in subdivision (b), the new misdemeanor crime of using a three-dimensional printer to manufacture a firearm, a frame or receiver of a firearm, or a firearm precursor part, unless the person or business holds a California firearms manufacturing license.

Defines "three-dimensional printer" as a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object.

A violation of this section continues to be a misdemeanor crime. Because no particular punishment is specified, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

P.C. 29180
(Amended)
P.C. 29181
(Repealed)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Changes the definition of "manufacturing or assembling a firearm" and makes a number of other changes related to the manufacture or assembly of firearms, including prohibiting the sale or transfer of firearms that were not manufactured by a federally licensed firearms manufacturer, and prohibiting the manufacture or assembly of firearms that do not have a serial number or identification mark (commonly referred to as "ghost guns.")

Revises the Definition of Manufacturing or Assembling
Revises the definition of "manufacturing or assembling a firearm" to mean the fabrication or construction of a firearm, "including through additive, subtractive, or other processes," to fit together the components parts of a firearm to construct a firearm.

Previously the definition was fabricating or constructing a firearm, or fitting together the component parts of a firearm to construct a firearm.

Adds Firearm Precursor Parts to the Requirements for Getting a Serial Number or ID Mark onto an Existing Firearm That Does Not Have One
Subdivision (c) adds firearm precursor parts to the requirements for getting a serial number or identification mark onto an existing firearm that does not have one or onto a firearm that a new resident has brought into California. These provisions now apply to firearm precursor parts that do not have a serial number or identification mark. Requires that existing firearms or firearm precursor parts that do not have serial numbers or identification marks get into compliance by January 1, 2024, with an application to DOJ for a serial number or mark. Requires that a new resident apply to DOJ within 60 days after arriving in California.

These deadlines and provisions are consistent with those in P.C. 23925, which is also amended by this bill.

This bill also creates, in new subdivision (b) of existing P.C. 23920, the misdemeanor crime of knowingly possessing, on and after January 1, 2024, any firearm that does not have a valid state or federal serial number or identification mark. Because P.C. 16520 now includes firearm precursor parts in the definition of "firearm," this crime applies to the possession of an unserialized precursor part.

continued

Adds that if a firearm is manufactured or assembled from polymer plastic, 3.7 ounces of material type 17-4 PH stainless steel shall be embedded within the plastic upon fabrication or construction.

Prohibits the Sale or Transfer of a Firearm by a Person or Firm That is NOT a Federally Licensed Firearms Manufacturer if the Firearm was Manufactured by a Person or Firm That is NOT a Federally Licensed Firearms Manufacturer

Revises subdivision (d) to prohibit a person, corporation, or firearm that is **not** a federally licensed firearms manufacturer from selling or transferring a firearm defined in P.C. 16520(g) if the person, corporation, or firm:

1. Manufactured or assembled the firearm; or
2. Knowingly caused the firearm to be manufactured or assembled by a person, corporation, or firm that is not a federally licensed firearms manufacturer; or
3. Is aware that the firearm was manufactured or assembled by a person, corporation, or firm that is not a federally licensed firearms manufacturer.

Retains exceptions for firearm sales or transfers to law enforcement agencies and firearms confiscated by or surrendered to law enforcement agencies.

P.C. 16520(g) (also amended by this bill) provides that a "firearm" for purposes of this section includes the completed frame or receiver of a weapon.

[Previously subdivision (d) prohibited the "sale or transfer of ownership of a firearm manufactured or assembled pursuant to this section."]

Prohibits the Manufacture or Assembly by Anyone of a Firearm That is Not Imprinted With a Valid Serial Number or Identification Mark

Adds a new subdivision (f) to create the misdemeanor crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, facilitating, aiding, or abetting the manufacture or assembly of, a firearm that is not imprinted with a valid state or federal serial number or mark of identification.

continued

Punishment Provisions for Violations of P.C. 29180
Pursuant to existing subdivision (g), if the firearm is a handgun, a violation of P.C. 29180 is punishable by up to one year in jail and/or by a fine of up to $1,000. For all other firearms, the punishment is up to six months in jail and/or by fine of up to $1,000.

Continues to provide that each firearm constitutes a distinct and separate offense.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 29182
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Eliminates provisions that had required DOJ to accept applications from, and grant firearm serial numbers to, persons wishing to manufacture or assemble firearms. Retains provisions about DOJ accepting applications from, and granting firearm serial numbers to, persons who wish to own a firearm, but makes the accepting and granting discretionary instead of mandatory, and adds firearm precursor parts. Now DOJ **may** grant serial numbers to persons who wish to own a firearm or firearm precursor part that does not have a valid state or federal serial number or identification mark.

Requires that the applicant be at least age 21 in order to get a firearm serial number or identification mark. Previously this section permitted a person age 18 but under age 21 to obtain a serial number or mark for a firearm that was not a handgun.

Sets forth a number of reasons DOJ may use to deny an application, including these:

1. A firearms eligibility check shows the person is prohibited from having a firearm;
2. Based on an eligibility check DOJ is not able to ascertain the disposition of an arrest or criminal charge or mental health evaluation; or
3. The firearm is an unsafe handgun, an assault weapon, a machinegun, a .50 BMG rifle, a destructive device, etc.

Increases, from 15 to 90, the number of calendar days DOJ has to grant or deny an application received on or after

continued

January 1, 2024. Provides that applications received before January 1, 2024 may be granted or denied "within a period of time prescribed by the department."

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 29185
(New)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Creates three new misdemeanor crimes relating to the use of a computer numerical control (CNC) milling machine to manufacture firearms.

(Milling is the process of cutting and drilling material, such as metal, wood, or plastic. Computer numerical control means that the milling machine is operated by a computer rather than manually by a human, which makes the cutting precise and eliminates human error.)

The three new misdemeanor crimes:

1. A person, firm, or corporation that is not a federally licensed firearms manufacturer or importer, using a CNC milling machine to manufacture a firearm, a completed firearm frame, a completed firearm receiver, or a firearm precursor part. (Thus, a person making a gun or gun part at home would be prohibited from using a CNC milling machine, but could use a manually controlled milling machine.)

2. Selling, offering to sell, or transferring a CNC milling machine that has the sole or primary function of manufacturing firearms, to any person in California, other than a federally licensed firearms manufacturer or importer.

3. A person, other than a federally licensed firearms manufacturer or importer possessing, purchasing, or receiving a CNC milling machine that has the sole or primary function of manufacturing firearms.

Provides that these crimes are misdemeanors, with no particular punishment specified. Therefore, P.C. 19 governs: up to six months in jail and/or a fine of up to $1,000.

continued

Sets forth some exceptions for the selling, transferring, possessing, purchasing, and receiving crimes in #2 and #3 above, such as a common carrier that transports property, and persons who, within 90 days of the effective date of this section (i.e., by September 28, 2022) sell or transfer a CNC milling machine to a federally licensed manufacturer or importer, or remove it from California, or relinquish it to a law enforcement agency.

Sets forth these exceptions for all three crimes: law enforcement agencies, forensic laboratories, and members of the military or National Guard acting within the scope of employment.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 29610
(Amended)
(Ch. 250) (SB 715)
(2021 Legislation)
(Effective 7/1/2023)

Beginning July 1, 2023, prohibits a minor from possessing **any firearm**. Until July 1, 2023, minors are prohibited from possessing a handgun, and legislation in 2021 (SB 715, effective January 1, 2022) added semiautomatic centerfire rifles as prohibited firearms for minors. SB 715 also added the prohibition on minors possessing any type of firearm, and set a delayed effective date of July 1, 2023.

Existing P.C. 29615 continues to specify a number of exceptions to the prohibition on a minor possessing a firearm, such as when the minor has parental permission or is accompanied by a responsible adult, and is engaged in competitive shooting or hunting; or when the minor has parental permission, the firearm is not a handgun or semiautomatic centerfire rifle, the minor is at least age 16 or accompanied at all times by a responsible adult, and the minor is engaging in or coming to or from a recreational sport or hunting activity.

Existing P.C. 29700 provides that a violation of P.C. 29610 is a felony or misdemeanor crime. It is a felony punishable by 16 months, two years, or three years in jail pursuant to P.C. 1170(h) if the minor has a prior conviction for a specified crime involving a firearm, or if the firearm that the minor illegally possesses is a handgun.

P.C. 29805
(Amended)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

and

(Amended)
(Ch. 143) (AB 2239)
(Section 1.5)
(Effective 1/1/2023)

AB 1621 creates a new felony crime in subdivision (d) to prohibit possessing, owning, purchasing, or receiving a firearm within 10 years of a conviction for P.C. 29180(e) or 29180(f). Applies to P.C. 29180(e) and (f) convictions that occur on and after January 1, 2023.

AB 2239 further amends new subdivision (d) to add a 10-year prohibition on possessing, owning, purchasing, or receiving a firearm after a misdemeanor conviction for child endangerment (P.C. 273a), or a misdemeanor conviction for elder or dependent adult physical abuse (P.C. 368(b) or (c)), or the false imprisonment of an elder or dependent adult by means of violence, menace, fraud, or deceit (P.C. 368(f)). Provides that subdivision (d) applies to P.C. 273a and 368 convictions that occur on and after January 1, 2023.

Provides that a violation of P.C. 29805(d) is punishable by imprisonment in the state prison or by up to one year in jail, and/or by a fine of up to $1,000.

Pursuant to existing P.C. 18, the state prison range of sentence is 16 months, two years, or three years. This is the same punishment that the other 10-year firearm prohibitions carry in P.C. 29805(a), (b), and (c).

[P.C. 29180(e) is the misdemeanor crime of a person, corporation, or firm knowingly allowing or facilitating the manufacture or assembly of a firearm by a person who is prohibited from having firearms because of a specified felony or misdemeanor conviction, probation condition, or restraining order (P.C. 29800–29875); or because of a specified violent felony conviction (P.C. 29900–29905); or because of a mental health evaluation or treatment (W&I 8100 and 8103).]

[P.C. 29180(f) is the misdemeanor crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, or aiding the manufacture of assembly of a firearm that is not imprinted with a valid state or federal serial number or identification mark.]

[*Note:* P.C. 368(f) is the non-alternative (straight) felony crime of falsely imprisoning an elder or dependent adult. It is punishable by two, three, or four years in jail pursuant to P.C. 1170(h). (When it was created in 1998, it was punishable

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by two, three, or four years in state prison, then was converted to a P.C. 1170(h) county jail crime by Realignment in 2011.) It cannot be charged as a misdemeanor. A defendant who has a conviction for P.C. 368(f) involving false imprisonment necessarily has a felony conviction. A person who owns or possesses a gun at any time after a P.C. 368(f) conviction should be charged with a violation of P.C. 29800(a)(1), the non-alternative felony crime of a felon in possession of a firearm. P.C. 29800(a)(1) is punishable by 16 months, two years, or three years in state prison and cannot be reduced to a misdemeanor. The early versions of the bill were worded as "a misdemeanor violation of Section … 368," which would not have included subdivision (f) because it is a non-alternative felony. Later versions listed specific subdivisions of P.C. 368, including subdivision (f).]

P.C. 29880
(New)
(Ch. 100) (AB 2551)
(Effective 1/1/2023)

Requires DOJ to notify a local law enforcement agency when a person prohibited from owning, purchasing, receiving, or possessing a firearm attempts to acquire a firearm or has attempted to report the acquisition or ownership of a firearm in order to have it listed in the P.C. 11106 firearms registry the Attorney General maintains.

The local law enforcement agency that is required to be notified is the one with jurisdiction over the area where the prohibited person resides.

Provides that if the person is prohibited from having a firearm because of a mental disorder (W&I 8100 or 8103), then DOJ must also notify the county department of mental health in the county where the prohibited person was last known to reside.

The purpose of this bill is to enable local law enforcement agencies to take action independent of DOJ's Bureau of Firearms, and thereby improve the enforcement of prohibited person laws. The legislative history of the bill notes that the list of prohibited persons in the Armed Prohibited Persons System (APPS) maintained by DOJ grows by 15 to 20 people per day and that there is a significant backlog of cases that have not yet been investigated.

[This bill also creates new P.C. 30372 to require DOJ to notify local law enforcement when a person prohibited from possessing ammunition attempts to purchase or acquire ammunition. See P.C. 30372, below, for more information.]

P.C. 30372
(New)
(Ch. 100) (AB 2551)
(Effective 1/1/2023)

Requires DOJ to notify a local law enforcement agency when a person prohibited from possessing ammunition attempts to purchase or acquire ammunition. The local law enforcement agency that is required to be notified is the one with jurisdiction over the area where the prohibited person resides.

Authorizes a local law enforcement agency that receives notification about an attempt to acquire ammunition to also investigate whether the person is in unlawful possession of a firearm. Prohibits the agency from contacting the person until the agency has attempted to confirm both of the following:

1. That the person is prohibited from possessing ammunition pursuant to P.C. 30305 (i.e., the person is prohibited from owning or possessing a firearm, or is subject to an injunction issued pursuant to Civil C. 3479 (nuisances) as a member of a P.C. 186.22 criminal street gang); and

2. That the person did in fact attempt to make the ammunition purchase.

Also provides that this section "does not authorize a law enforcement agency to conduct a search without a warrant."

The purpose of this bill is to enable local law enforcement agencies to take action independent of DOJ's Bureau of Firearms, and thereby improve the enforcement of prohibited person laws.

[This bill also creates new P.C. 29880 to require DOJ to notify local law enforcement when a person prohibited from possessing, purchasing, or receiving a firearm attempts to acquire a firearm. See P.C. 29880, above, for more information.]

P.C. 30400
(Repealed & Added)
P.C. 30401
(New)
P.C. 30405
P.C. 30406
P.C. 30412
P.C. 30414
(Repealed)
P.C. 30420
(Amended)
P.C. 30442
P.C. 30445
P.C. 30447
P.C. 30448
P.C. 30450
P.C. 30452
P.C. 30454
P.C. 30456
P.C. 30470
P.C. 30485
P.C. 30490
P.C. 30495
(Repealed)
(Ch. 76) (AB 1621)
(Effective 6/30/2022)

Makes a few amendments to, and repeals most of, Chapter 1.5 of Division 10 of Title 4 in Part 6 of the Penal Code (P.C. 30400–30495), which is entitled "Firearm Precursor Parts."

Chapter 1.5 was created in 2019 by AB 879, with a delayed effective date. Most of the repealed sections were not designated to be effective until July 1, 2022. See above for amendments and new sections relating to firearm precursor parts, including P.C. 16520 (the definition of "firearm", which now includes firearm precursor parts) and P.C. 16531 (the definition of "firearm precursor part").

Because firearm precursor parts are now included in the definition of "firearm" (see P.C. 16520, above), separate restrictions for firearm precursor parts are no longer required for the most part, because existing provisions regarding the sale, transfer, possession, etc., of firearms now include firearm precursor parts.

New Crime of Unlawfully Purchasing, Selling, or Transferring Ownership of a Firearm Precursor Part: P.C. 30400

Repeals P.C. 30400, which set forth two misdemeanor crimes relating to firearm precursor parts: Selling a firearm precursor part to a person under age 21; or supplying, delivering, or giving possession of a firearm precursor part to a minor who is a person prohibited from possessing a firearm or ammunition pursuant to existing P.C. 29610. (Because this bill amends P.C. 16520 to include firearm precursor parts in the definition of "firearm," existing statutes apply to these repealed precursor part crimes. Existing P.C. 27505 prohibits the selling, loaning, or transferring of a firearm, which now includes precursor parts, to a person under age 21, with some specified exceptions.)

Adds a new version of P.C. 30400 to prohibit purchasing, selling, offering to sell, or transferring ownership of a firearm precursor part that is not a federally regulated firearm precursor part.

"Federally regulated firearm precursor part" is defined in new P.C. 16519: Any firearm precursor part deemed to be a firearm pursuant to federal law (18 U.S.C. 921 and following), and, if required, has been imprinted with a

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serial number by a federal licensee authorized to serialize firearms in compliance with all applicable federal laws and regulations.

Sets forth two exceptions in P.C. 30400 and three exceptions in amended P.C. 30420.

Note: **The new version of P.C. 30400 does not specify any punishment for this new crime or designate it as a felony or misdemeanor or infraction crime.** It is not clear whether the new crime in P.C. 30400 is a misdemeanor or felony or infraction, or what the punishment is. The repealed version of P.C. 30400 provided for a punishment of up to six months in jail and/or a fine of up to $1,000. The new version of P.C. 30400 is silent on punishment and on whether the crime is a felony, misdemeanor, or infraction.

The exceptions:

1. **P.C. 30400(b)(1)**: The purchase of a firearm precursor part that is not a federally regulated firearm precursor part, by a federally licensed firearms manufacturer or importer, or by a federal licensee authorized to serialize firearms.
2. **P.C. 30400(b)(2)**: The sale, offer to sell, or transfer of ownership of a firearm precursor part that is not a federally regulated firearm precursor part, to a federally licensed firearms manufacturer or importer, or to a federal licensee authorized to serialize firearms.
3. **P.C. 30420(a)**: A member of the U.S. Armed Forces or National Guard while on duty and acting within the scope of employment, or a law enforcement agency or forensic laboratory.
4. **P.C. 30420(b)**: A common carrier licensed under state law, or a motor carrier or air carrier, or an authorized agent of a carrier, when acting in the course and scope of duties regarding the receipt, processing, transportation, or delivery of property.
5. **P.C. 30420(c)**: An authorized representative of a city, county, state, or federal government that receives an unserialized firearm precursor part as part of an authorized, voluntary program in which the government entity is buying or receiving firearms or firearm precursor parts from private individuals.

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DOJ May Issue a Determination About Whether an Item or Kit is a Firearm Precursor Part: New P.C. 30441
Authorizes DOJ, upon receiving a written request or form prescribed by DOJ, to issue a determination to a person about whether an item or kit is a firearm precursor part. Requires the request or form to be signed under penalty of perjury and contain a complete and accurate description of the item or kit, and a sample of the item or kit for examination. Requires the sample to include all accessories and attachments relevant to the firearm precursor part determination, including any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are made available by the seller or manufacturer of the item or kit.

Authorizes, DOJ, after examination, to return the sample to the requestor, unless DOJ determines that the return of the item would put the requestor in violation of the law.

Retains Existing P.C. 30425, Which Does Not Prohibit the Manufacture of Firearm Precursor Parts Pursuant to Government Contracts
P.C. 30425 is not amended or repealed, and continues to provide that nothing in Article One of Chapter 1.5 of Division 10 of Title 4 of Part Six of the Penal Code prohibits the manufacture of firearm precursor parts under contracts approved by agencies of the state or federal government.

Repeals Most of Chapter 1.5
Only four sections remain in Chapter 1.5: The new version of P.C. 30400, new P.C. 30401, the amended version of P.C. 30420, and existing P.C. 30425. All other sections are repealed.

[This is part of a lengthy bill dealing with unserialized firearms, also known as "ghost guns," and firearm precursor parts.]

P.C. 34010
(Amended)
(Ch. 58) (AB 200)
(Effective 6/30/2022)

Adds the superior court and any parties to a civil or criminal action related to a firearm, to those entities (DOJ) that a law enforcement agency is required to notify when it retains a firearm pursuant to P.C. 34005, or when it destroys a firearm that was surrendered to it pursuant to P.C. 18000 or 18005.

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[P.C. 34005 permits a law enforcement agency, in lieu of destruction, to deliver a firearm to the California National Guard or to a state or federal military agency if it may be useful to that agency or to a military museum.

Public Resources Code

Pub. Res. C. 5164
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes which disqualify a person from being hired to work, or from being permitted to volunteer, at a park, playground, or recreational center in a position having supervisory or disciplinary authority over a minor.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or when an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that Pub. Res. C. 5164 still applies to P.C. 262 cases.]

Streets & Highways Code

S&H 893
S&H 894
(New)
(Ch. 147) (AB 1946)
(Effective 1/1/2023)

Creates new Article 4 in Chapter 8 of Division 1of the Streets & Highways Code entitled "Electric Bicycle Safety and Training."

Requires the California Highway Patrol (CHP), by September 1, 2023 and in collaboration with relevant stakeholders, to develop statewide safety and training programs for users of electric bicycles, and to include topics such as riding safety, emergency maneuver skills, rules of the road, and laws pertaining to electric bicycles.

Requires the safety and training programs to be posted on CHP's Internet website.

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Vehicle Code

V.C. 1656.1
(New)
(Ch. 332) (AB 2537)
(Effective 1/1/2023)

Requires DOJ in conjunction with the Commission on Peace Officer Standards and Training (POST) to create a video demonstrating the proper conduct by a peace officer and an individual during a traffic stop. Requires DOJ to post the video on its Internet website.

This bill also amends Educ. C. 51220.4 to add viewing this video as a requirement for a 7th to 12th grade course in automobile driver education, and amends V.C. 11113 to add viewing the video as a requirement for the curriculum of driving schools.

[It may be relevant and useful, in a particular criminal case, to be able to show that the defendant has viewed this video.]

V.C. 1808.48
(New)
(Ch. 482) (AB 1766)
(Effective 1/1/2023)

Provides that notwithstanding any other law, no law enforcement agency, government agency or department, commercial entity, or other person shall obtain, access, use, or disclose, noncriminal history information maintained by the DMV, for the purpose of immigration enforcement, as defined in Gov't C. 7284.4(f).

[Gov't C. 7284.4(f) defines "immigration enforcement" as any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.]

[This bill also amends V.C. 12801.9 and creates new V.C. 13001.5 to require the DMV, by July 1, 2027, to issue identification cards to people who cannot prove they are legally present in the United States. See below. V.C. 12801.9 already requires DMV to issue driver's licenses to people who cannot prove legal presence in the United States.]

V.C. 2267
(Repealed)
(Ch. 825) (SB 960)
(Effective 1/1/2023)

Repeals this section, which had required that a person appointed as a member of the California Highway Patrol be a U.S. citizen.

[This bill also amends Gov't C. 1031 to eliminate the requirement that a peace officer be a U.S. citizen, or be a

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permanent resident who is eligible for and has applied for citizenship. Instead, a person who wants to be a peace officer need only be legally authorized to work in the U.S. This bill also repeals Gov't C. 1031.5, which had provided that a permanent resident immigrant who is employed as a peace officer would be disqualified from holding that position, if the peace officer had not obtained citizenship within three years due to failing to cooperate with the processing of the citizenship application, or if citizenship was denied.]

V.C. 2806.5
(New)
(Ch. 805) (AB 2773)
(Effective 1/1/**2024**)

Beginning January 1, 2024, requires a peace officer making a traffic or pedestrian stop, **before** engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer has a reasonable belief that withholding the reason for the stop is necessary to protect life or property from imminent threat. Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

[Numerous police agencies opposed this bill, pointing out that there are many variables that must be considered when a person is stopped, and that it often makes sense for an officer to seek and obtain additional information at the very beginning of a contact. As the bill made its way through the Legislature, it was amended to eliminate two extreme provisions:

1. Requiring an officer to state the reason for a stop before asking **any** questions (which opponents of the bill argued would prevent an officer from asking for identification or asking a motorist to turn off the ignition before stating the reason for the stop); and

2. Authorizing a P.C. 1538.5 suppression motion to be brought if an officer fails to state a reason for the stop in the manner required by this new section.]

[This bill also amends Gov't C. 12525.5 to add "The reason given to the person stopped at the time of the stop" to the types of information that local and state law enforcement agencies are required to report annually to the Attorney General on all stops conducted by the agency.]

V.C. 5204
(Amended)
(Ch. 306) (SB 1359)
(Effective 1/1/2023)

Requires a law enforcement officer to confirm with DMV that a vehicle does not have a current registration, before issuing a citation for the failure to display current registration tabs, an infraction crime. Prohibits the issuance of a citation for failing to display current registration tabs when the vehicle's registration is current.

This amendment does not prohibit a vehicle from being stopped for the failure to display registration tabs or for having registration tabs that have expired. (Tabs indicate the month and year that a vehicle's registration expires.) According to the legislative history for this bill, the Legislature is concerned about the theft of registration stickers and innocent drivers being victimized twice–once when their sticker is stolen and again when they receive a citation for failing to have a current sticker, or any sticker, on the rear license plate.

This bill makes the same amendment to V.C. 40225, so that a person who is authorized to enforce parking violations is required to confirm with the DMV that a vehicle does not have a current registration, before issuing a citation for V.C. 5204(a). Provides that if the person does not have access to DMV records, a citation cannot be issued for V.C. 5204(a). See V.C. 40225, below.

V.C. 10852.5
(New)
(Ch. 514) (SB 1087)
(Effective 1/1/2023)

Creates a new infraction crime that applies to all persons (not just core recyclers) to prohibit the purchase of a used catalytic converter from any person or business that is **not** an automobile dismantler; a core recycler; a motor vehicle manufacturer or dealer; a licensed automotive repair dealer; a licensed business that may reasonably generate, possess, or sell used catalytic converters; or an individual possessing documentation of lawful ownership of a used catalytic converter, including a certificate of title or registration that has a vehicle identification number (VIN) that matches the VIN permanently marked on the catalytic converter.

Provides that a first violation is punishable by a $1,000 fine, a second violation by a $2,000 fine, and a third or subsequent offense by a $4,000 fine.

[This bill also amends B&P 21610 to makes changes to requirements for core recyclers (persons or businesses who buy used catalytic converters) in order to discourage and

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prevent the theft of catalytic converters. See the Business & Professions Code section of this digest for more information about section 21610.]

V.C. 12801.9
(Amended)
V.C. 13001.5
(New)
(Ch. 482) (AB 1766)
(Effective 1/1/2023)

Requires the DMV, by July 1, 2027, to issue identification cards to people who cannot prove they are legally present in the United States, if they can show satisfactory proof of their identity and California residency. V.C. 12801.9 already requires DMV to issue driver's licenses to people who cannot prove legal presence in the United States.

Eliminates the "DP" ("driving privilege") designation on driver's licenses issued to people who cannot prove they are present legally in the United States. Previously licenses issued pursuant to V.C. 12801.9 contained the "DP" designation and driver's licenses for United States citizens contained a "DL" (driver's license) designation.

V.C. 12801.9 continues to provide in subdivision (j) (renumbered from subdivision (k) to (j) by this bill), that documents used by applicants to prove identity or residency shall not be disclosed except in response to a subpoena or court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order. This bill adds that documents used by applicants to prove identity or California residency are not public records. It also adds this sentence: "Immigration enforcement, as defined in Section 7284.4 of the Government Code, does not constitute an urgent health and safety need for purposes of this subdivision."

[Gov't C. 7284.4(f) defines "immigration enforcement" as any and all efforts to investigate, enforce, or assist in the investigation or enforcement of federal civil immigration law, and of federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.]

V.C. 13365
V.C. 13365.2
(Amended)
(Ch. 800) (AB 2746)
(Effective 1/1/2023)
(To Be Repealed 1/1/2027)

Repeals both of these driver's license suspension sections on January 1, 2027, in order to eliminate the requirement that the DMV suspend the driver's license of a defendant who fails to appear in court when it receives a failure to appear notice from a court pursuant to V.C. 40509 or 40509.5.

This bill also repeals V.C. 40509 and 40509.5 as of January 1, 2023 (see below), in order to eliminate court notices to DMV about failures to appear.

Uncodified Section 27 of this bill provides that any driver's license suspension issued by DMV pursuant to V.C. 13365 or 13365.2 before January 1, 2027 will terminate on January 1, 2027.

[The legislative history of this bill states that the four-year delay between the repeal of V.C. 40509 and 40509.5 on January 1, 2023, and the repeal of V.C. 13365 and 13365.2 on January 1, 2027 is to allow time to make programing changes to DMV's computers.]

V.C. 13954
(Amended)
(Ch. 81) (AB 2198)
(Effective 1/1/2023)

Changes the word "accident" to "crash" in this section that details when the DMV must suspend or revoke the driver's license of a driver involved in a crash (e.g., when the driver has a blood alcohol level of 0.08 or more; the crash occurred within five years of a P.C. 191.5(b) vehicular manslaughter while intoxicated conviction).

Uncodified Section One of this bill provides that it is the Legislature's intent that replacing "accident" with "crash" does not impose any new duty or responsibility.

According to the legislative history of this bill, the term "crash" is a more accurate way to refer to a collision involving an impaired or distracted driver. An accident is unpredictable and the term suggests a lack of culpability on the part of the driver. Drunk, drugged, or distracted drivers are statistically much more likely to be involved in a crash, and driving while drunk, drugged, or distracted is a choice, not an accident.

[This bill also amends other Vehicle Code sections to change "accident" to "crash": V.C. 1821, 13800, 23517, 23575.5, 40300.5, and 40300.6.]

V.C. 16056
V.C. 16430
V.C. 16435
V.C. 16451
V.C. 16500
(Amended)
(Ch. 717) (SB 1107)
(Effective 1/1/**2025**)

Beginning January 1, 2025, increases the minimum required amounts for motor vehicle insurance for bodily injury, death, and property damage. Increases, from $15,000 to $30,000, the minimum insurance that must be carried for the bodily injury or death of one person. Increases, from $30,000 to $60,000, the minimum insurance for the bodily injury or death of two or more people. Increases, from $5,000 to $15,000, the minimum insurance to cover property damage.

Provides that on January 1, 2035, these minimums will increase again, to $50,000 (bodily injury or death to one person), $100,000 (bodily injury or death for all persons), and $25,000 (property damage).

The above minimums also apply to owners of vehicles used in the transportation of passengers for hire, including taxicabs, when the operation of the vehicle is not subject to regulation by the Public Utilities Commission.

[The legislative history of the bill notes that California's minimum insurance requirements have been in effect since 1967 and states that California ranks in the bottom three states with the lowest levels of vehicle insurance protection.]

V.C. 20011
(Amended)
(Ch. 223) (SB 925)
(Effective 1/1/2023)

Adds medical examiners to those persons (coroners) who are required to report in writing each month to the California Highway Patrol the death of any person killed in a motor vehicle accident and the circumstances of the accident.

Also adds that chemical test results, both alcohol and drugs, must be reported in writing when available.

[This bill also amends Gov't C. 27491.25 to add medical examiners, and to require that coroners and medical examiners test for drugs when a deceased person was the driver of a motor vehicle. See the Government Code section of this digest for more information.]

V.C. 21451
V.C. 21452
V.C. 21453
V.C. 21456
V.C. 21461.5
V.C. 21462
(Amended)
(Ch. 957) (AB 2147)
(Effective 1/1/2023)

Amends these sections to prohibit a pedestrian from being stopped for violating these sections (i.e., jaywalking) "unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other device moving exclusively by human power." Provides that this new prohibition does not relieve pedestrians from the duty of using due care for their safety and does not relieve drivers from the duty of exercising due care for the safety of any pedestrian in the roadway.

The purpose of the bill is to prevent law enforcement from stopping and citing a pedestrian for jaywalking when it is supposedly not hazardous to do so. (The legislative history of the bill claims there are racial disparities and pretext stops with jaywalking enforcement.)

This bill sets a bad precedent and is unusual in that it prohibits law enforcement from stopping a person and issuing a citation for a legitimate violation of the law, rather than re-defining the offense to exclude jaywalking when it is safe to do so. The California District Attorneys Association properly argued that the bill should be amended to provide that a pedestrian is **not** in violation of these statutes unless a reasonably careful person would realize there is an immediate danger of a collision. This suggested amendment would have re-defined the various offenses and maintained law enforcement's authority to enforce a violation.

[V.C. 21451 applies to traffic light signals when they are green; V.C. 21452 applies to traffic light signals when they are yellow and about to turn red; V.C. 21453 applies to traffic signals that are red; V.C. 21456 applies to pedestrian "Walk," "Wait," and "Don't Walk" signals; V.C. 21461.5 makes it unlawful for a pedestrian to fail to obey any sign or signal erected or maintained to carry out the provisions of the Vehicle Code; and V.C. 21462 requires pedestrians and drivers to obey the instructions of an official traffic signal unless otherwise directed by a police or traffic officer, or when it is necessary to avoid a collision, or in case of an emergency.]

[This bill also amends VC. 21950–21966 by adding the same language. It also creates new V.C. 21949.5. See below.]

V.C. 21760
(Amended)
(Ch. 343) (AB 1909)
(Effective 1/1/2023)

Amends the Three Feet For Safety Act (requiring vehicles passing bicyclists to stay at least three feet away) to require the passing vehicle to change lanes before passing a bicyclist, if there is more than one lane for traffic going in that direction.

V.C. 21949.5
(New)
V.C. 21950
V.C. 21953
V.C. 21954
V.C. 21955
V.C. 21956
V.C. 21961
V.C. 21966
(Amended)
(Ch. 957) (AB 2147)
(Effective 1/1/2023)

Amends these sections to prohibit a pedestrian from being stopped for violating these sections (i.e., jaywalking) "unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other device moving exclusively by human power." Provides that this new prohibition does not relieve pedestrians from the duty of using due care for their safety and does not relieve drivers from the duty of exercising due care for the safety of any pedestrian in the roadway.

The purpose of the bill is to prevent law enforcement from stopping and citing a pedestrian for jaywalking when it is supposedly not hazardous to do so. (The legislative history of the bill claims there are racial disparities and pretext stops with jaywalking enforcement.)

This bill sets a bad precedent and is unusual in that it prohibits law enforcement from stopping a person and issuing a citation for a legitimate violation of the law, rather than re-defining the offense to exclude jaywalking when it is safe to do so. The California District Attorneys Association properly argued that the bill should be amended to provide that a pedestrian is **not** in violation of these statutes unless a reasonably careful person would realize there is an immediate danger of a collision. This suggested amendment would have re-defined the various offenses and maintained law enforcement's authority to enforce a violation.

New V.C. 21949.5 requires the California Highway Patrol Commissioner, by January 1, 2028 and in consultation with the Institute of Transportation Studies at the University of California, to submit a report to the Legislature regarding pedestrian-related traffic crash data and an evaluation of whether and how this bill has impacted pedestrian safety.

[V.C. 21950 requires drivers to yield the right-of-way to pedestrians in crosswalks; V.C. 21953 requires pedestrians crossing a roadway to yield to vehicles when a pedestrian tunnel or overhead crossing is nearby and could be used;

continued

V.C. 21954 requires pedestrians to yield to vehicles when not in a marked or unmarked crosswalk; V.C. 21955 prohibits pedestrians from crossing a roadway at any place other than in a crosswalk, when they are between intersections that have traffic control devices; V.C. 21956 requires pedestrians to walk as close as possible to the left side when on a roadway; V.C. 21961 provides that local authorities are not prevented from adopting ordinances prohibiting pedestrians from crossing roadways at other than crosswalks; and V.C. 21966 prohibits pedestrians from walking along a bicycle path when there is an adjacent and adequate pedestrian facility.]

[This bill also amends V.C. 21451–21462 to add the same language. See above.]

V.C. 23109
(Amended)
(Ch. 436) (AB 2000)
(Effective 1/1/2023)

Expands all four crimes in this section (engaging in a motor vehicle speed contest or a motor vehicle exhibition of speed on a highway), to offstreet parking facilities. Previously these crimes applied only to highways, defined in existing V.C. 360 as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street."

Provides that "offstreet parking facility" has the same meaning as in V.C. 12500(c) (an offstreet facility held open for use by the public for parking vehicles, including publicly owned facilities and privately owned facilities).

This bill addresses illegal sideshows and street racing that are increasingly occurring in parking lots.

Retains existing punishment provisions.

[Subdivision (a) prohibits engaging in a motor vehicle speed contest. Subdivision (b) prohibits aiding or abetting a motor vehicle speed contest. Subdivision (c) prohibits engaging in a motor vehicle exhibition of speed or aiding and abetting it. Subdivision (d) prohibits placing a barricade or obstruction for the purpose of facilitating or aiding a speed contest or exhibition of speed.]

V.C. 23517
(Amended)
(Ch. 81) (AB 2198)
(Effective 1/1/2023)

Changes the word "accident" to "crash" in this section that authorizes a court to order a young drunk driver to visit a facility such as a hospital emergency room or county morgue.

Uncodified Section One of this bill provides that it is the Legislature's intent that replacing "accident" with "crash" does not impose any new duty or responsibility.

Eliminates as a visitation site a facility that cares for advanced alcoholics in the terminal stages of alcoholism or drug abuse.

Retains trauma facilities, hospitals, coroner offices, and county morgues as visitation sites.

Adds that before a court may require a visitation, the court must consider the speed of the vehicle, the severity of any injuries sustained, and whether the defendant or ward was engaged in a V.C. 23109 speed competition. (According to the legislative history of this bill, visiting a facility where people have destroyed their bodies after years of alcohol and/or drug abuse does not convey the immediacy of the harm that drunk or drugged driving causes.)

According to the legislative history of this bill, the term "crash" is a more accurate way to refer to a collision involving an impaired or distracted driver. An accident is unpredictable and the term suggests a lack of culpability on the part of the driver. Drunk, drugged, or distracted drivers are statistically much more likely to be involved in a crash, and driving while drunk, drugged, or distracted is a choice, not an accident.

[This bill also amends other Vehicle Code sections to change "accident" to "crash": V.C. 1821, 13800, 13954, 23575.5, 40300.5, and 40300.6.]

V.C. 24011.5
(New)
(Ch. 308) (SB 1398)
(Effective 1/1/2023)

Subdivision (a) prohibits an automobile dealer or manufacturer from selling a new passenger vehicle that is equipped with any partial driving automation feature, or from providing any software update or vehicle upgrade that adds a partial driving automation feature, without providing the buyer or owner with a "distinct notice" that

continued

provides the name of the feature and clearly describes the functions and limitations of the feature.

Requires an automobile manufacturer to provide information to a dealer so that the dealer can comply with subdivision (a). Provides that a dealer will not be in violation of subdivision (a) if the manufacturer fails to provide the information or if the information provided is not in compliance with this new section. Provides that a manufacturer is not in violation of subdivision (a) if the manufacturer provides the required information and the dealer fails to provide notice to the buyer or owner.

Pursuant to existing V.C. 40000.1, a violation of subdivision (a) is an infraction crime. V.C. 40000.1 provides that except as otherwise provided in the Vehicle Code, it is unlawful and constitutes an infraction for any person to violate, or to fail to comply with, any provision of the Vehicle Code.

Subdivision (b) prohibits an automobile manufacturer or dealer from naming or describing a partial driving automation feature in marketing materials using language that implies, or would lead a reasonable person to believe, that the feature allows the vehicle to function as a fully autonomous vehicle. Provides that a violation of this subdivision is considered a misleading advertisement for purposes of existing V.C. 11713 (which prohibits making untrue or misleading statements or advertisements related to vehicle sales).

Pursuant to existing V.C. 40000.11(a), a violation of V.C. 11713 is a misdemeanor crime and not an infraction.

Provides that "partial driving automation feature" has the same meaning as "Level 2 partial driving automation" in the Society of Automotive Engineers (SAE) Standard J3016 (April 2021). Examples are lane departure warning, automatic emergency braking, blind spot warning, lane centering, and adaptive cruise control.

[According to the legislative history, the bill addresses a concern about vehicle features that are marketed in such a way that drivers may believe they can pay less attention to the road and to their driving.]

V.C. 27150.4
(New)
(Ch. 449) (SB 1079)
(Effective 1/1/2023)

Requires the California Highway Patrol (CHP) to evaluate the efficacy of "sound-activated enforcement devices" designed to measure vehicle noise levels, from at least three different companies, and report its findings and recommendations to the Legislature by January 1, 2025.

Defines "sound-activated enforcement device" as an electronic device that uses automated equipment that activates when noise levels exceed the legal sound limits established in V.C. 27151 (95 dbA – adjusted decibels), and is designed to obtain clear video of a vehicle and its license plate.

[According to the legislative history of this bill, the Legislature is concerned about noise pollution caused by vehicle exhaust systems that are modified to unlawfully loud levels. The goal of the bill is to find a device that law enforcement can use to enforce vehicle exhaust system noise levels in a consistent manner, such as violations of V.C. 27150 (requiring vehicles to be equipped with an adequate muffler that is properly maintained to prevent excessive or unusual noise) and V.C. 27151 (prohibiting the modification of a vehicle exhaust system to amplify or increase noise emitted by the motor).]

V.C. 27151.1
(New)
(Ch. 595) (AB 2496)
(Effective 1/1/**2027**)

Beginning January 1, 2027, requires a person ticketed for a violation of V.C. 27150.3 (adding a whistle tip to a vehicle's exhaust system) or V.C. 27151 (modifying a vehicle's exhaust system to increase the noise emitted) to prove to the court, within three months of the violation, that the vehicle is fixed, or face a hold on the vehicle's registration.

Requires a court, beginning January 1, 2027, to notify the DMV to place a registration hold on a vehicle found to be in violation of V.C. 27150.3 or V.C. 27151, if the court has not been presented with a certificate of compliance within three months of the violation date.

Requires DMV, before renewing the registration of any vehicle, to check to see whether there is a hold on the vehicle registration, and prohibits DMV from renewing the registration until it has received notice from the court that a certificate of compliance has been received.

continued

Provides that this new section applies to vehicles under 14,000 pounds gross vehicle weight.

Pursuant to existing V.C. 27150.3, a whistle tip is a device attached to a vehicle's exhaust pipe for the sole purpose of creating a high-pitched or shrieking noise when the vehicle is operated.

[The goal of this bill is to crack down on illegally modified mufflers and decrease noise pollution. According to the legislative history of the bill, many offenders elect to pay the fix-it ticket and keep a vehicle's exhaust system as is, rather than clear the ticket by fixing the vehicle.]

V.C. 40000.10
(New)
V.C. 40000.11
(Amended)
(Ch. 800) (AB 2746)
(Effective 1/1/2023)

Removes V.C. 12500(a) (the crime of driving a vehicle without a valid driver's license) from the list of misdemeanor crimes in V.C. 40000.11 and creates V.C. 40000.10 to set forth new punishment provisions for V.C. 12500(a).

Provides that a first or second violation of V.C. 12500(a) is an infraction punishable by a fine of $100.

But if a defendant has a prior driver's license suspension or revocation for a specified violation*, a first or second violation is punishable as a misdemeanor or an infraction pursuant to P.C. 19.8. (P.C. 19.8 continues to list all V.C. 12500 violations as woblettes, which can be charged as misdemeanors or infractions).

Provides that for a third or subsequent violation, the crime is a misdemeanor or infraction pursuant to P.C. 19.8.

[*The specified violations are P.C. 192(c) (vehicular manslaughter), V.C. 12809(e) (negligent or incompetent operator of a motor vehicle), V.C. 13353 (refusing to take a chemical test, V.C. 13353.1 (refusing to take a preliminary alcohol screening test), V.C. 13353.2 (immediate license suspension by DMV for specified blood alcohol levels), V.C. 23103 (reckless driving), V.C. 23104 (reckless driving causing bodily injury), V.C. 23105 (reckless driving causing serious bodily injury), V.C. 23109 (speed contests and exhibition of speed), V.C. 23152 (DUI), V.C 23153 (DUI causing injury), or V.C. 23154 (driving with a 0.01 blood alcohol level while on probation for DUI).]

V.C. 40225
(Amended)
(Ch. 306) (SB 1359)
(Effective 1/1/2023)

Requires a person who is authorized to enforce parking violations to confirm with DMV that a vehicle does not have a current registration, before issuing a citation for V.C. 5204(a), the infraction crime of failing to display current registration tabs. (Tabs indicate the month and year that a vehicle's registration expires.) Prohibits the issuance of a citation for failing to display current registration tabs when the vehicle's registration is actually current. Provides that if the person does not have access to DMV records, a citation cannot be issued for V.C. 5204(a).

[According to the legislative history for this bill, the Legislature is concerned about the theft of registration stickers and innocent drivers being victimized twice–once when their sticker is stolen and again when they receive a citation for failing to have a current sticker, or any sticker, on the rear license plate.]

[This bill makes the same amendment to V.C. 5204, so that a law enforcement officer is required to confirm with the DMV that a vehicle does not have a current registration, before issuing a citation for V.C. 5204(a), and is prohibited from issuing the citation if the vehicle has a current registration on file with the DMV. See V.C. 5204, above.]

V.C. 40300.5
V.C. 40300.6
(Amended)
(Ch. 81) (AB 2198)
(Effective 1/1/2023)

Changes the word "accident" to "crash" in both of these sections.

(V.C. 40300.5 authorizes an arrest without a warrant when a peace officer has reasonable cause to believe a person was driving drunk and/or drugged under specified circumstances, including when there has been a traffic crash, or when evidence may be destroyed or concealed, or when the person may cause injury or property damage unless immediately arrested. V.C. 40300.6 provides that V.C. 40300.5 is to be liberally interpreted to permit arrests to be made within a reasonable time and distance away from the scene of a traffic crash.)

Uncodified Section One of this bill provides that it is the Legislature's intent that replacing "accident" with "crash" does not impose any new duty or responsibility.

According to the legislative history of this bill, the term "crash" is a more accurate way to refer to a collision

continued

involving an impaired or distracted driver. An accident is unpredictable and the term suggests a lack of culpability on the part of the driver. Drunk, drugged, or distracted drivers are statistically much more likely to be involved in a crash, and driving while drunk, drugged, or distracted is a choice, not an accident.

[This bill also amends other Vehicle Code sections to change "accident" to "crash": V.C. 1821, 13800, 13954, 23517, and 23575.5.]

V.C. 40509
V.C. 40509.5
(Repealed)
(Ch. 800) (AB 2746)
(Effective 1/1/2023)

Repeals both of these sections, which had permitted, or required depending on the offense, the court to notify the DMV when a defendant failed to appear in court for a violation of the Vehicle Code, or a violation that could be heard by a juvenile traffic hearing referee, or a violation of a statute relating to the safe operation of a vehicle.

V.C. 40509.5(b) required notification when a defendant charged with V.C. 23152 (DUI), V.C. 23153 (DUI causing injury), P.C. 191.5 (vehicular manslaughter while intoxicated), or P.C. 192.5(a) (vessel manslaughter) failed to appear.

V.C. 40509 and V.C. 40509.5(a) permitted notification for all other Vehicle Code offenses.

V.C. 40509.1 continues to permit a court to notify DMV when a defendant has failed to comply with a court order except a failure to appear, or has failed to pay a fine, or has failed to attend traffic violator school.

This bill also repeals V.C. 13365 and V.C. 13365.2 on January 1, **2027** in order to eliminate the requirement that the DMV suspend the driver's license of a defendant who fails to appear in court when it receives a failure to appear notice from a court pursuant to V.C. 40509 or V.C. 40509.5.

Uncodified Section 27 of this bill provides that any driver's license suspension issued by the DMV pursuant to V.C. 13365 or 13365.2 before January 1, 2027 will terminate on January 1, 2027.

[The legislative history of this bill states that the four-year delay between the repeal of V.C. 40509 and 40509.5 on

continued

January 1, 2023, and the repeal of V.C. 13365 and 13365.2 on January 1, 2027 is to allow time to make programing changes to DMV's computers.]

This bill amends several other Vehicle Code sections to add "former" before "Section 40509" and "Section 40509.5."

Welfare & Institutions Code

(See the Juvenile Offenders section for W&I changes that pertain to juvenile criminal law.)

W&I 827
(Amended)
(Ch. 613) (SB 1071)
(Effective 1/1/2023)

and

(Amended)
(Ch. 870) (AB 2711)
(Effective 1/1/2023)

Adds additional persons who may inspect a juvenile case file:

1. Attorneys in an administrative hearing pertaining to a foster child or caregiver's receipt of state-administered public assistance programs (SB 1071); and
2. Personnel of the State Department of Social Services when a party to an adoption has petitioned a court to reverse the adoption (AB 2711).

W&I 3200
W&I 3201
W&I 3202
W&I 3203
(New)
(Ch. 783) (AB 2365)
(Effective 1/1/2023)

Creates new Chapter 1 in Division 3 of the Welfare & Institutions Code Section, entitled "Fentanyl Program Grants."

Requires the California Health and Human Services Agency, to the extent funds are appropriated, to establish a grant program to reduce fentanyl use and overdoses. Provides for six grants: two in Northern California, two in the Central Valley, and two in Southern California. Authorizes a local jurisdiction or agency, or a group of local jurisdictions or agencies working together, to submit a grant application. Authorizes grant money to be used for education programs in schools; to increase testing abilities for fentanyl; for overdose and prevention programs, including making naloxone or other overdose recovery drugs more available in the community; and for increasing social services and substance abuse recovery services to those addicted to fentanyl or other opioids.

W&I 4335.2
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

and

(Amended)
(Ch. 738) (AB 204)
(Effective 9/29/2022)

Makes several changes to this section that was created by AB 133 in 2021. Beginning July 1, 2021, W&I 4335.2, as created by AB 133, authorized the State Department of State Hospitals (DSH) to conduct re-evaluations of felony defendants in county jail 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 and to identify defendants whose competence has been restored while in jail, or who may be divertible, or who may be suitable for outpatient

continued

treatment, or who may be malingering. These re-evaluations are to be performed mostly remotely, as telehealth evaluations.

This year's amendments to W&I 4335.2 are made by SB 184. AB 204 amends W&I 4335.2 only to eliminate an obsolete cross-reference to P.C. 1370.01.

DSH May Re-Evaluate Any County Jail Inmate Awaiting Admission to DSH
Eliminates the restriction that DSH evaluate county jail inmates who have been waiting 60 days or more for admission to DSH, so that DSH is now authorized to reevaluate **any** county jail inmate who has been found incompetent, no matter how long that inmate has been awaiting admission to DSH.

Requires County Jails to Allow DSH Access to Incompetent Defendant's Information and to Cooperate With DSH
Adds a ninth goal of this re-evaluation program: To require local county jails to allow DSH access to necessary information about an incompetent defendant, including records and "collateral information."

Requires local county jail staff, including contractors, to provide "prompt and unimpeded collateral consult" upon the request of DSH and its evaluators, for the purpose of determining an incompetent defendant's behavior, care, progress, and treatment.

DSH May Request Information From Defense Attorneys and Defense Attorneys May Provide DSH With Confidential Information
Adds that when conducting a re-evaluation, DSH may request a defendant's attorney to provide information bearing on the defendant's capacity to rationally cooperate in his or her defense that is absent from the records accessible to the court.

Provides that a defendant's attorney may provide to DSH a written statement of the attorney's reasoning for questioning the defendant's mental competence, and the time of the attorney's most recent contact with the defendant.

continued

Provides that any communication between the defense attorney and the evaluator is confidential pursuant to Evid. C. 954 (lawyer-client privilege).

Adds Facts Supporting a Conservatorship to the Requirements of a Reevaluation
Adds the following to the list of requirements for a reevaluation: If applicable, facts supporting that a defendant appears gravely disabled as described in W&I 5008(h)(1)(A), which a court may utilize to order a conservatorship investigator to initiate conservatorship proceedings pursuant to P.C. 1370(c)(3).

Continues to require a reevaluation to address topics such as whether a defendant should be referred to a county diversion program, whether a defendant is not likely to be restored to competence, and malingering.

A Court May Order Involuntary Antipsychotic Medication on the Recommendation of DSH
Authorizes a court to order the involuntary administration of antipsychotic medication on the recommendation of a DSH clinician. Provides that if a hearing is ordered by the court, the clinician must be permitted to testify remotely. Provides that in-person witness testimony shall only be allowed upon a finding of good cause.

W&I 4336
(New)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Requires the State Department of State Hospitals (DSH) to implement a "growth cap program" for all counties, whereby each county will pay a penalty if it has more felony defendants found incompetent to stand trial in a particular fiscal year, than it did in the 2021-2022 fiscal year.

Baseline Numbers
Provides that the baseline number of persons found incompetent to stand trial on felony charges for each county is the number of felony incompetent determinations made in the 2021-2022 fiscal year in that county. The baseline number of any county with zero felony incompetent determinations in the 2021-2022 fiscal year is one person.

Penalties
Beginning with the 2022-2023 fiscal year and each fiscal year thereafter, a county must pay a penalty for each felony incompetent determination that exceeds the baseline number from the 2021-2022 fiscal year.

continued

Provides that DSH sets the penalty rate, counties pay a percentage of that rate, and the percentage changes depending on how many felony incompetent determinations exceed a county's baseline number, or whether the county has a specified contract with DSH by the 2026-2027 fiscal year.

Provides that a county must pay 50 percent of the DSH rate for the 5th, 6th, and 7th felony incompetent determinations over the baseline number, 75 percent of the rate for the 8th and 9th persons, and 100 percent of the rate for the 10th and all subsequent persons.

Beginning with the 2026-2027 fiscal year, a county that has a felony mental health diversion or community-based restoration contract with DSH, must pay 100 percent of the rate for the third and all subsequent persons over the baseline number. A county without a DSH contract must pay 150 percent of the rate for the third and all subsequent persons over the baseline number.

Notice to District Attorneys, Public Defenders, Courts, Sheriffs, County Administrators, and County Behavioral Health Departments
Requires DSH to periodically notify the court and relevant county agencies, including district attorneys, public defenders, sheriffs, county administrators, and county behavioral health departments of the total felony incompetent determinations made in that county for the current fiscal year compared to the baseline number for that county.

Mental Health Diversion Fund
Creates a Mental Health Diversion Fund in the State Treasury to receive penalty payments from counties.

Provides that monies in the fund shall be used to support county activities that divert defendants with serious mental illnesses away from the criminal justice system and reduce the number of felons found incompetent to stand trial.

Requires that activities supported by the fund must include one or more of the following:

continued

1. "Prebooking mental health diversion" for persons with a serious mental illness, to prevent their arrest for a felony. Provides that this target population are persons demonstrating psychosis manifesting as hallucinations, delusions, disorganized thoughts, or disorganized behavior at the time of the interaction.

2. "Postbooking mental health diversion" for persons with a serious mental illness who are likely to be found incompetent to stand trial. The goal for this group is to prevent an incompetency determination and to divert the person from incarceration.

   Provides that this target population are persons diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder but excluding a primary diagnosis of antisocial personality disorder, borderline personality disorder, and pedophilia, and who are presenting non-substance-induced psychotic symptoms.

3. Re-entry services and support to persons who have been restored to competency following a felony incompetent to stand trial commitment, and are directly released to the community from jail.

Annual Report From Each County
Beginning in the 2024-2025 fiscal year, requires each county that has received money from the Mental Health Diversion Fund to submit an annual report, by October 1, identifying how the money was used in the prior fiscal year.

W&I 4360.5
(New)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Requires the State Department of State Hospitals (DSH) to establish a statewide panel of independent evaluators to make Forensic Conditional Release Program placement determinations for defendants committed to DSH who are transitioning to community treatment settings.

[The Forensic Conditional Release Program (FCR) was established pursuant to W&I 4360 to provide mental health treatment and supervision in the community for judicially committed persons. W&I 4360 permits DSH to provide services directly or to contract with private providers or counties.]

continued

Provides that the purpose of the panel is to identify state hospital patients who are ready for discharge to the FCR Program, in order to promote successful community reintegration. Provides that the panel may consist of both contracted and civil service licensed psychologists, and licensed social workers, designated by DSH.

Requires a panel member to evaluate a state hospital patient using DSH guidelines and "evidence-based risk assessment tools," and to provide the court that has jurisdiction over the defendant with a written placement recommendation.

Provides that the statewide panel may be used either independently or in conjunction with community program directors.

Provides that this new section will be repealed on June 30, 2026.

W&I 4361
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Makes several changes to this section, which provides funding from the State Department of State Hospitals (DSH) to counties for mental disorder diversion (P.C. 1001.35–1001.36) for defendants with serious mental disorders who have been found incompetent to stand trial.

No Matching Funds are Required
Eliminates the requirement that a county match 10 or 20 percent of the funding, so that a county may now receive DSH funding with no matching funds required.

The Quarterly County Report
Requires a county that receives funding to report data and outcomes to DSH within 30, instead of 90, days after the end of each quarter. Adds additional information that must be reported about each diverted defendant: The criminal identification and information (CII) number of the defendant and whether the charge was a felony or a misdemeanor.

Mental Disorder Exclusions
Consistent with the mental disorder exclusions in P.C. 1001.36(b)(1)(A), these disorders are added as exclusions in W&I 4361: antisocial personality disorder, borderline personality disorder, and pedophilia.

continued

A County Must Provide the Court Order Finding a Defendant Incompetent and the Original Mental Health Evaluation

Provides that if a defendant is committed directly to a county program in lieu of commitment to DSH, the county must provide to the program the court minute order documenting the incompetent to stand trial finding and the original psychiatric or psychological evaluation. (The amendment uses the language "the original alienist evaluation associated with that finding." "Alienest" is an old term used to refer to a psychiatrist or psychologist, and is still sometimes used to refer to a psychiatrist or psychologist who assesses a defendant's mental competence.)

W&I 4361.7
(New)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

Authorizes the State Department of State Hospitals (DSH), subject to an appropriation by the Legislature, to contract for medical, evaluation, and other necessary services, including involuntary medication, in order to facilitate early access to treatment for county jail inmates who have been deemed incompetent to stand trial on a felony charge. This new section requires county jails to allow DSH and its contractors reasonable access to incompetent inmates so that early treatment can be provided.

Permits DSH to participate in involuntary medication hearings for defendants in county jails who are being treated by DSH employees or contractors.

W&I 5150
W&I 5151
W&I 5256
(Amended)
(Ch. 960) (AB 2275)
(Effective 1/1/2023)

Adds procedural protections for persons who are taken into custody on a W&I 5150 72-hour hold for being a danger to self or others:

1. Adds that the 72-hour period for evaluation begins when the person is first detained.

   [The legislative history of the bill states that when the 72-hour clock starts running varies among counties, with some counties not starting the 72 hours until a person is actually admitted to a designated evaluation facility.]

2. Requires the facility that is holding the person involuntarily to notify a patients' rights advocate if the person is not released within 72 hours of detention.

continued

Amends W&I 5256 in two ways:

1. Eliminates the provision that had permitted a certification review hearing (the hearing after a detained person has been certified for 14 days of intensive treatment) to be postponed for 48 hours, or, in small counties, postponed until the next regularly scheduled hearing date. Therefore, a certification review hearing must be held within four days of the date the person is certified for intensive treatment, unless postponed at the request of the detained person, or his or her attorney or advocate.

2. Adds that if a person has **not** been certified for 14 days of intensive treatment pursuant to existing W&I 5250, and remains detained pursuant to W&I 5150, a certification review hearing must be held within seven days of the date the person was initially detained pursuant to W&I 5150, unless judicial review has been requested pursuant to existing W&I 5275 and 5276. Requires that detained persons be informed of their rights regarding the hearing, including the right to have the help of a county patients' rights advocate to prepare for the hearing, and have their questions answered.

[This bill also amends W&I 5275 and W&I 5350. See below.]

W&I 5270.55
(Amended)
W&I 5270.70
(New)
(Ch. 619) (SB 1227)
(Effective 1/1/2023)

Authorizes a court to approve a second 30-day period of intensive mental health treatment beyond the existing 30-day period that may be authorized after a 14-day period of treatment and a 72-hour hold.

Amends W&I 5270.55 to increase, from 47 days (72-hour hold, 14-day intensive treatment, and 30-day certification) to 77 days, the maximum involuntary detention for a gravely disabled person. (W&I 5150 [72-hour hold] plus W&I 5152 [14 days of intensive treatment], plus W&I 5270.15 [30 days of treatment], and new W&I 5270.70 [additional 30 days of treatment]).

Adds new W&I 5270.70 to create a procedure for a facility to file a petition and request that a court approve a second 30-day hold for intensive treatment for a person who remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, and who is unwilling or

continued

unable to accept treatment voluntarily. Requires the court to appoint the public defender "or other attorney" to represent the patient. Requires the court to either deny the petition or order an evidentiary hearing to be held within two court days. Requires the court to find all of the following in order to approve the additional 30 days of intensive treatment:

1. The person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism;
2. The person has been advised of, and has not accepted, voluntary treatment;
3. The facility providing intensive treatment is equipped and staffed to provide the required treatment and is designated by the county to provide intensive treatment; and
4. The person is likely to benefit from continued treatment.

W&I 5275
(Amended)
(Ch. 960) (AB 2275)
(Effective 1/1/2023)

Expands the right to a hearing by writ of habeas corpus beyond persons certified for intensive treatment after a 72-hour W&I 5150 hold, to all persons detained under the Lanterman-Petris-Short Act (W&I 5000–5556), including those taken into custody on a 72-hour hold.

[This bill also amends W&I 5150, 5151, 5256, and 5350. See above and below.]

W&I 5328
(Amended)
(Ch. 47) (SB 184)
(Effective 6/30/2022)

and

(Amended)
(Ch. 738) (AB 204)
(Effective 9/29/2022)

SB 184 adds a new subdivision (b) to provide district attorneys with access to information and records about defendants who are committed under specified statutes because of mental health issues. SB 204 amends new subdivision (b) to change "may" to "shall" and to add at the end "unless otherwise prohibited by law."

New subdivision (b) provides that notwithstanding subdivision (a), which provides for the confidentiality of information and records about voluntary and involuntary recipients of mental health services pursuant to W&I 4000–4885 and W&I 5000–7700, information and records "shall, as necessary, be provided to and discussed with district attorneys" for the purposes of commitment, recommitment, or release proceedings for defendants committed under specified statutes, unless otherwise prohibited by law. The specified statutes are P.C. 1026 (insanity), P.C. 1370 (incompetent to stand trial),

continued

P.C. 1600 (outpatient status for specified offenders), P.C. 2962 (mentally disordered offenders), P.C. 2972 (recommitment as a mentally disordered offender), and W&I 6600 (sexually violent predators).

SB 184 also adds a new paragraph (27) to subdivision (a) to list the "parties to a judicial or administrative proceeding as permitted by law" and who satisfy specified requirements in Title 45 of the Code of Federal Regulations, to those entities and persons to whom mental health information and records may be disclosed.

W&I 5350
(Amended)
(Ch. 960) (AB 2275)
(Effective 1/1/2023)

Adds that the failure to begin a conservatorship trial within the continuance period requested by counsel for the proposed conservatee, is grounds for dismissal of the conservatorship proceedings. (Continues to provide that a court or jury trial must commence within 10 days of the date the proposed conservatee demands a trial, and that a court shall continue the trial date for up to 15 days at the request of the proposed conservatee's attorney.)

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W&I 5987
(New)
(Ch. 319) (SB 1338)
(Effective 1/1/2023)

Creates Part 8 in Division 5 of the Welfare & Institutions Code, entitled "The Community Assistance, Recovery, and Empowerment Act" (The CARE Act). The CARE Act creates a civil court system to evaluate and treat mentally ill people and provide them with a variety of services, including mental health care, medication, housing resources, and social services.

This bill affects criminal law by amending P.C. 1370.01 to provide that a judge who finds a mentally incompetent misdemeanor defendant not eligible for mental disorder diversion (P.C. 1001.36), may refer the defendant to CARE. Amended P.C. 1370.01 requires a court to hold a CARE eligibility hearing within 14 days of the referral and requires that the charges be dismissed pursuant to P.C. 1385 if a defendant is accepted into a CARE program. [For more information, see P.C. 1370.01 in the Penal Code section of this digest.]

Implementation (W&I 5970.5)
Some counties are required to implement a CARE program by October 1, 2023, unless a delay is approved or funding is not allocated. This applies to the counties of Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne.

The remaining counties are required to implement a CARE program by December 1, 2024, unless a delay is approved or funding is not allocated.

Qualifying for the CARE Process (W&I 5972)
In order to qualify for CARE, a person (the respondent) must meet all of the following criteria:

1. Age 18 or older;

2. Currently experiencing a severe mental illness and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders. Specifically provides that a person who has a current diagnosis of substance use disorder but who does not meet the mental illness and disorder diagnosis criteria is **not** eligible for CARE;

3. Not clinically stabilized in on-going voluntary treatment;

continued

4. Unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating; or is in need of services and support in order to prevent relapse or deterioration that would likely result in grave disability or serious harm to the person or others, as defined in W&I 5150;

5. Participation in CARE would be the least restrictive alternative necessary to ensure recovery and stability; and

6. It is likely the person will benefit from CARE.

The County in Which a CARE Proceeding May Be Commenced (W&I 5973)
CARE proceedings may commence in the county where the respondent resides, or where the respondent is found, or where the respondent is facing criminal or civil proceedings.

Who May File a CARE Petition (W&I 5974)
Any of these persons may file a petition to initiate the CARE process:

1. An adult who lives with the respondent;

2. An adult who is the spouse, parent, child, sibling, or grandparent of the respondent;

3. The director of a hospital or charitable organization;

4. A licensed behavioral health professional;

5. A first responder (e.g., peace officer, firefighter, paramedic, EMT, mobile crisis response worker, homeless outreach worker) who has had repeated interactions with the respondent;

6. A public guardian or public conservator;

7. The director of a county behavioral health agency;

8. The director of county adult protective services;

9. The director of a California Indian health services program;

continued

10. The judge of a tribal court; or

11. The respondent.

W&I 5971(m) provides that if the petitioner is a person other than the director of a county behavioral health agency, at the initial hearing on the petition the court shall substitute the director of a county behavioral health agency as the petitioner.

A Court May Refer a Person to CARE (W&I 5978)
A court may also start the CARE process by referring a person to CARE from assisted outpatient treatment, or from conservatorship proceedings, or when a misdemeanor defendant has been found incompetent to stand trial pursuant to P.C. 1370.01 and has been found ineligible for P.C. 1001.36 mental disorder diversion.

Judicial Council Petition and Forms (W&I 5975)
Requires the Judicial Council to develop a CARE petition form and any other necessary forms. Requires a petition to be signed under the penalty of perjury and to contain the name and address of the respondent; the petitioner's relationship to the respondent; facts showing the respondent meets the CARE criteria; and either an affidavit of a licensed behavioral health professional that the respondent meets the diagnostic criteria for CARE, or evidence that the respondent was detained for a minimum of two intensive treatments pursuant to W&I 5250–5259.3 and the most recent treatment was within the previous 60 days.

CARE Hearings (W&I 5976–5977.4)
Respondents are entitled to counsel, and have the right to be present at the hearing, to present evidence and call witnesses, to cross-examine witnesses, and to appeal decisions.

Hearings are presumptively closed to the public, but the respondent may demand that the hearing be public, or, may request the presence of a family member or friend without waiving the right to keep the hearing closed.

A court is required to first determine whether the petitioner has made a prima facie showing that the respondent meets the CARE criteria. If not, the petition is dismissed. If yes, the case is set for a hearing. At the hearing on the merits,

continued

the burden of proof is on the petitioner to show that the respondent meets the CARE criteria by clear and convincing evidence; otherwise, the petition must be dismissed. If the court finds that the respondent meets the CARE criteria, then the court must order the county behavioral health agency to work with the respondent, the respondent's attorney and the respondent's supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement. Requires the court to set a case management hearing within 14 days, in order to hear evidence about whether the parties have entered into a CARE agreement. If the court approves a CARE plan, a status review hearing must be held at least every 60 days. Requires all proceedings to be conducted in an "informal nonadversarial atmosphere with a view to obtaining the maximum cooperation of the respondent."

If the Respondent Refuses or Fails to Participate in the CARE Process (W&I 5979)
The court may terminate the CARE process if it determines by clear and convincing evidence that the respondent is not participating, or is not adhering to the CARE plan. The court may use its existing legal authority pursuant to the Lanterman-Petris-Short Act (W&I 5000–5556) to have the respondent evaluated, including an evaluation pursuant to W&I 5200–5213 to determine if the respondent is a danger to self or others. Provides that the respondent's failure to comply with an order "shall not result in a penalty outside of this section, including, but not limited to, contempt or a failure to appear." Provides that a respondent's failure to comply with a **medication** order shall not result in any penalty, including under this section." (Emphasis added.)

W&I 6608.1
(New)
(Ch. 104) (AB 1641)
(Effective 1/1/2023)

Requires that a sexually violent predator (SVP) who is released on outpatient status or is granted conditional release be monitored by a global positioning system (GPS) until the SVP is unconditionally discharged.

[According to the legislative history of this bill, the current practice is that all SVPs who are released are monitored on GPS. This bill makes GPS monitoring a statutory requirement, thereby codifying an important public safety practice.]

W&I 6608.5
(Amended)
W&I 6608.6
(New)
(Ch. 880) (SB 1034)
(Effective 1/1/2023)

A Committee of Local Officials is Required to Assist in Locating Housing For SVPs

Instead of a county agency or program providing assistance in locating an appropriate place for a conditionally released sexually violent predator (SVP) to live, amends W&I 6608.5 to require that a committee of designated local officials assist the Department of State Hospitals (DSH) in locating suitable housing. Provides that this committee will consist of the SVP's attorney, the sheriff or the police chief of the locality for placement, and the county counsel and the district attorney in the county of domicile of the SVP, or their designees.

Authorizes a court to order a status conference to evaluate the progress of DSH in locating and securing housing and in obtaining assistance and information from the Committee. Permits the court to sanction any of the committee members for failing to appear at the status conference unless the member shows good cause for the failure to appear. Provides that committee members are **not** required to perform a housing site assessment.

Continues to require that an SVP be placed in the county of domicile unless the court finds that extraordinary circumstances require placement in a different county.

The Procedures Permitting a Court to Find Extraordinary Circumstances and Place an SVP in a Different County

Creates new W&I 6608.6 to set forth the required procedures before a court is authorized to find extraordinary circumstances for placing an SVP in a different county.

Authorizes a court to make a finding of extraordinary circumstances only after the SVP's county of domicile has petitioned the court to make this finding.

Permits the court to find extraordinary circumstances only after all of the following have occurred:

1. The county of domicile has demonstrated that it has engaged in an exhaustive housing search with meaningful and robust participation by the committee of local officials, in both committee conferences and status conferences. Requires the county of domicile to provide the court with declarations from the county of

domicile and from all of the participants attesting to the exhaustive housing search;

2. The county of domicile has provided at least one alternative placement county for consideration and has notified the district attorney in that county, and DSH, of the intention to petition for a finding of extraordinary circumstances. If applicable, the county of domicile must indicate how the SVP has a community connection to the proposed placement county;

3. The county of domicile has provided the declarations and community connection information described above to DSH and to the district attorney of the proposed placement county; and

4. DSH, and the district attorney of the proposed placement county, are noticed at least 30 days before the hearing, and have an opportunity to be heard at that hearing.

Requires a court to state its findings on the record, and the grounds supporting its findings, if extraordinary circumstances are found. Prohibits a finding of extraordinary circumstances from being based on the extraordinary costs associated with a housing placement inside the county of domicile. Prohibits a court from ordering a search of housing placements outside the county of domicile until after the court has found that extraordinary circumstances exist.

Permits a court to order placement in an alternative county whenever there is a stipulation between the county of domicile and the alternative placement county.

Requires the Judicial Council to report annually to the Legislature on the instances in which a court finds extraordinary circumstances, including the grounds for the findings.

W&I 9450
(New)
(Ch. 621) (SB 1342)
(Effective 1/1/2023)

Adds new Chapter 5.5 in Division 8.5 of the Welfare & Institutions Code entitled "Aging Multidisciplinary Personnel Teams."

Permits an area agency on aging, or a county, or both, to establish an aging multidisciplinary personnel team with the goal of facilitating the expedited identification, assessment,

continued

and linkage of older adults (defined as age 60 or older) to services, and to allow provider agencies and members of the personnel team to share confidential information for the purpose of coordinating services.

Provides that the Personnel Team may include police officers, probation officers, and other law enforcement agents; attorneys; people trained in mental health and substance abuse; medical personnel; social workers experienced in providing services to older adults; case managers; veterans service providers and counselors; and domestic violence victim service organizations.

W&I 10850
(Amended)
(Ch. 506) (SB 1054)
(Effective 1/1/2023)

Permits employees of a county's adult protective services agency or a county's child welfare agency to share otherwise confidential information with each other for the purpose of multidisciplinary teamwork in the prevention, intervention, management, or treatment of child abuse or neglect, or of the abuse or neglect of an elder or dependent adult.

W&I 15610.63
(Amended)
(Ch. 197) (SB 1493)
(Effective 1/1/2023)

Makes a technical, non-substantive amendment to add former P.C. 262 (spousal rape) to the list of crimes that fit the definition of "physical abuse" and "sexual assault" for purposes of the Elder Abuse and Dependent Adult Civil Protection Act.

[In 2021, AB 1171 repealed P.C. 262 (spousal rape) and incorporated it into P.C. 261 (rape). Numerous conforming amendments were made to other code sections, either deleting "262" altogether or adding the word "former" in front of "262." In a few statutes, the amendment should have substituted "former 262" instead of deleting the cross-reference to 262 altogether. This is because, despite the repeal of P.C. 262, there may be prosecutions for violations of P.C. 262 in the future based on crimes committed before 2022, such as when a defendant has absconded and is arrested in 2022 or beyond, or an investigation and prosecution of a pre-2022 crime is not completed before 2022. Adding former P.C. 262 clarifies that W&I 15610.63 still applies to P.C. 262 cases.]

W&I 15633
(Amended)
(Ch. 506) (SB 1054)
(Effective 1/1/2023)

Makes an amendment to the Elder Abuse and Dependent Adult Civil Protection Act (W&I 15600–15675) to permit employees of a county's adult protective services agency or a county's child welfare agency to share otherwise confidential information with each other for the purpose of multidisciplinary teamwork in the prevention, intervention, management, or treatment of the abuse or neglect of a child, or the abuse or neglect of an elder or dependent adult.

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