



California Attorneys for
Criminal Justice Presents:

New Laws: What You Need to Know

Speaker:
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3:30-5:00pm,



What You Need to Know Now

- This is not a comprehensive guide of everything. Nothing about juveniles.
- Garrick Byers's CPDA guide. <https://claraweb.us/wp-content/uploads/2022/12/New-Laws-for-2023-6.pdf>
- Kathy Stornton's CDAA guide. <https://www.cdaa.org/wp-content/uploads/2022-Leg-Digest.pdf>
- [http://wiki.waylandchang.com/index.php/Changes to law in 2023](http://wiki.waylandchang.com/index.php/Changes_to_law_in_2023)
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Personal and remote appearance under the new PC977

- Urgency legislation effective from 06/30/22 to 12/31/23
- New PC977 is not the same as the COVID-19 Emergency Rules
 - Emergency rules allowed 977 at arraignment
- PC977(b) felony waivers can be oral. But court can order client physically present at next court date.
- Victims can request court to order client physically present.
- Under 977(c), 977.3 with defendant's consent, hearings other than trial and sentencing can be remote. Witnesses can testify at misdo trial or PX by remote.
- Trial with absence of refusing in-custody client now codified.
- Reporter has to be physically in the courtroom.

Firearm Prohibitions

- Penal Code 29805 (AB2239 and AB1621), effective 01/01/2023
- New 10-year prohibitions for misdemeanor convictions of
 - PC273a child abuse
 - PC368 elder abuse
 - PC29180 manufacturing firearms without serial numbers

Firearms – “Ghost Guns”

- AB1621, effective 06/30/22
- “Firearm precursor parts” aka 80%s are unfinished firearm parts.
- Under current law, to legally self-manufacture a firearm, must have a serial number from California Department of Justice, or it’s a misdemeanor.
- Possession of unserialized 80%s – still legal, until 01/01/24. After that, you need to get a serial number for unfinished parts.
- Possession of firearm by a prohibited person now expanded to 80%s.
- Illegal to have a CNC mill whose primary purpose is finishing 80%s.
- Illegal to use 3D printer to manufacture firearms.
- If you’ve got a ghost gun case, just call or e-mail me.

Impeachment – immigration status

- Evidence Code 351.4 (SB836), effective 08/22/22
- It's back! Previous iteration, SB785, was in effect 07/17/2018 to 12/31/21
- Cannot discuss a defendant's or witness's immigration status in open court unless after in camera hearing. No standard at all for when to allow. Evid. Code 352?
- The author's intent was to prevent impeachment by defense attorneys, in particular, San Francisco public defenders, about VAWA and U-Visas.
- Uncodified law says: "This act does not alter a prosecutor's existing obligation to disclose exculpatory evidence."
- *People v. Villa* (2020) 55 Cal.App.5th 1042 – impeachment about U-Visa minimally probative
- *People v. Casillas* (2021) 65 Cal.App.5th 135 – lack of legal status probative for motive
- Does it apply at arraignment/bail review?
- What about a split sentence? *People v. Arce* (2017) 11 Cal.App.5th 613

Public Nuisance

- Penal Code 372.5 (AB2195), effective 01/01/23
- “Wet reckless for drugs” – A negotiated plea to public nuisance, PC370
- Broad definition of drugs. Not just Controlled Substances Act.
- Must be part of a negotiated plea bargain between defense and prosecution.
- If drug infraction dismissed, infraction.
- If drug misdemeanor dismissed, one-year max misdemeanor.
- If drug felony, including sales/transportation, dismissed, 16-2-3 1170(h) wobbler.

Dismissal / “Expungements” under PC1203.4, PC1203.41, PC1203.42, PC1203.45

- Penal Code 1203.41 (SB1260), effective 01/01/23.
- Convictions resulting in prison sentences now qualify! Do not have to wait until 07/01/23.
 - Can’t be on parole
 - Probably can’t be on post-release community supervision.
- Judicial Council hasn’t issued new CR-180s. But the existing CR-180s should still work.

Dismissal / “Expungements” under PC1203.4, PC1203.41, PC1203.42, PC1203.45

- Penal Code 1203.426 (AB1803), effective 01/01/23*
- “A person seeking relief pursuant to Sections 1203.4, 1203.41, 1203.42, and 1203.45, and who meets the criteria set forth in Section 68632 of the Government Code shall not be required to reimburse the court, the county, or any city for the actual costs of services rendered, whether or not the petition is granted and records are sealed or expunged.”
 - SSI, CalWORKS, TANF, SNAP, General Relief, CAPI, IHSS, Medi-Cal, WIC, unemployment, etc., or <200% of poverty guidelines
- Essentially codifies *Lewis v. Clarke* (2003) 108 Cal.App.4th 563

Prop 47 and Prop 64

- Last day to file recall/resentencing under Prop 47/Penal Code 1170.18 was November 4, 2022.
- But statute, Penal Code 1170.18(j) does allow for late filings “upon showing of good cause.”
- Health and Safety Code 11361.9 (AB1706)
 - By March 1, 2023, Department of Justice to automatically do Prop 64 that was not done by local DAs

Restitution

- SB1106, effective 01/01/23*.
- PC17(f) – “When the court exercises its discretion under this section, an unfulfilled order of restitution or a restitution fine shall not be grounds for denial of a request or application for reduction”
- PC1203.4, PC1203.4a, PC1203.41, PC1203.42, PC1203.45, drug Prop 36
 - An unfulfilled order of restitution or a restitution fine shall not be grounds for finding that a defendant did not fulfil the condition of probation for the entire period of probation.
 - When the court considers a petition for relief under this section, in its discretion and in the interest of justice, an unpaid order of restitution or restitution fine shall not be grounds for denial of the petition for relief.

Evidence - “Creative expression”

- Evidence Code 352.2 (AB2799), effective 01/01/23*
- Not just rap lyrics, but any form of “creative expression”
 - “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”
- Evidence Code 352 and Evidence Code 1101 propensity analysis
 - “the probative value of such expression for its literal truth or as a truthful narrative is minimal unless that expression is created near in time to the charged crime or crimes, bears a sufficient level of similarity to the charged crime or crimes, or includes factual detail not otherwise publicly available” against
 - “the possibility that the trier of fact will, in violation of Section 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.

Evidence - “Creative expression”

From a federal case involving white supremacists plotting to start a race war by attacking the power grid.

14 MS. KOCHER: No further questions, your Honor.
15 THE COURT: I've got a follow-up question about the
16 Biggie Smalls' lyric.
17 MS. KOCHER: About the what? I'm sorry.
18 THE COURT: About the Biggie Smalls' lyric. I got seven
19 Mack 11s, about eight 38s, nine 9s. That's a Biggie Smalls' lyric.
20 Are we looking for those firearms?
21 THE WITNESS: I don't know. I don't recognize that.
22 THE COURT: This is in the Government's Exhibit 8 where
23 it says, I've got seven Mack 11s, about eight 38s, nine 9s. That's
24 a rap lyric.
25 MS. KOCHER: I'm --

1 THE COURT: The Court's independently aware of that.
2 MS. KOCHER: And it's a what? I'm not understanding the
3 words, sir. I apologize.
4 THE COURT: So if you look on page 8 --
5 MS. KOCHER: Yes.
6 THE COURT: -- Government's Exhibit 8, page 1 --
7 MS. KOCHER: Yes.
8 THE COURT: -- where he says, I'll need a list of ammo to
9 get. Then he says, I got seven Mack 11s, about eight 38s, nine 9s.
10 I understand the rest. We're about to get 308 12 gauge pigeons.
11 That's a genuine shopping list, but that to me seems like he's just
12 tossing a Biggie Smalls' lyric into the chat.
13 THE WITNESS: I don't recognize the lyrics is what I'm
14 saying, sir.
15 THE COURT: Okay. Yeah. Well, that is a Biggie Smalls'
16 lyric.

Evidence - “Creative expression”

- <https://www.youtube.com/watch?v=6Lk4zSDMmj8>

17	MS. KOCHER: I am still not understanding the word. I
18	apologize.
19	THE COURT: Biggie Smalls? Biggie Smalls is a dead
20	rapper.
21	MS. KOCHER: Oh.
22	THE COURT: It's a lyric from a song by the dead rapper,
23	Biggie Smalls.
24	MS. KOCHER: Got it.
25	THE COURT: There's a lot of other stuff going on here,

Search and seizure issues – jaywalking

- AB2147, effective 01/01/23
- ““A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall not stop a pedestrian for a violation of subdivision (a) 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.”
- Affirmatively says “shall not stop”

Search and seizure issues – driving without a license

- Vehicle Code 40000.10 (AB2746), effective 01/01/2023.
- First or second offense of VC12500 is an infraction.
 - Unless prior suspension because of PC192(c), VC12809(e), or DUIs under 13353, 13353.1, 13353.2, 23103, 23104, 23105, 23109, 23152, 23153, or 23154.
 - If prior suspension, then “woblette” that can be reduced by court.
- Third or subsequent VC12500 is a woblette that can be reduced by court.
- Officers can probably still impound / inventory search under VC14607.6
- Beware *Atwater v. City of Lago Vista* (2001) 532 U.S. 318

Search and seizure issues – loitering for prostitution

- Penal Code 653.20/653.22 repealed (SB357), effective 01/01/23
- Bill author, Senator Wiener, said that the loitering law allowed police “target and arrest people if they are wearing tight clothes or a lot of make-up.”

Search and seizure issues – stating the reason for the stop

- Vehicle Code 2806.5 (AB2773), operative 01/01/24
- “A peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop. The officer shall document the reason for the stop on any citation or police report resulting from the stop.”
- Original bill included grounds for 1538.5

Rights of Incarcerated People

- Free phone calls. Penal Code 2084.5, Welfare and Institutions Code 208.1 (SB1008), effective 01/01/23*.
 - Prisons and juvenile facilities. But maybe not jails.
- Compassionate release. Penal Code 1172.2 (AB960), effective 01/01/23.
 - Presumption if terminal illness or unable to complete basic activities of daily living.
- Release on parole / post-release community supervision. Penal Code 3003 (SB990), operative 01/01/24*
 - “The existence of a housing option in another county, including with a relative or acceptance into a transitional housing program of choice.”
- Habeas corpus based on new science. Penal Code 1473 (SB467), 01/01/23

Veterans

- Penal Code 1170.91 (SB1209), effective 01/01/23*
- Sentencing for veterans now retroactive for those currently serving a sentence.
 - (A) Reduce the defendant's term of imprisonment by modifying the sentence.
 - (B) Vacate the conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or by the Attorney General if the case was originally prosecuted by the Department of Justice.

Racial Justice Act

- RETROACTIVE!
- AB256
 - Death or immigration consequences, eligible 01/01/23
 - Currently serving prison or 1170(h) sentence, or DJJ, eligible 01/01/24
 - Conviction after 2015, eligible 01/01/25
 - Any felony conviction, eligible 01/01/26

Court Initiated Misdemeanor Diversion aka Judicial Diversion

- Penal Code section 1001.95 (AB200), effective 01/01/23.
- Exclusions expanded from PC273.5 and PC243(e) to “any offense involving domestic violence as defined Family Code 6211 or Penal Code 13700(b)
- So diversion not allowed for anything that involves domestic violence probation terms under PC1203.097
- So if a relationship is involved, all of the DV-adjacent crimes such as PC594 vandalism, PC591.5 interference with phone, PC236 false imprisonment, etc. don't qualify for judicial diversion.

Mental Disorder Diversion

- Penal Code section 1001.36 (SB1223), effective 01/01/23.
- Criteria changed.
 - Changed to diagnosis “within the last five years”
 - Nexus presumed unless there’s clear and convincing evidence.
- Diversion for misdemeanor now only one year.
- Go read People v. Whitmill (Dec. 23, 2023, B318582) about “unreasonable risk of danger to public safety.”
https://scholar.google.com/scholar_case?case=183700667286180324
42

CARE Court

- SB1338
- Glenn, Orange, Riverside, San Diego, Stanislaus, Tuolumne, San Francisco, by 10/01/23
- Rest of California by 12/01/24
- Will be one of the options for misdemeanor 1368.

Holidays

- AB1655, AB1801, AB2596, effective 01/01/23.
- ~~Lunar New Year~~
- ~~April 24 – Genocide Remembrance Day~~
- June 19 – Juneteenth
- ~~September 9 – Admission day~~
- Fourth Friday of September – Native American Day
 - Instead of Columbus Day

Penal Code section 17.2

- Either the greatest thing ever or the most meaningless thing ever. But if CDAA is afraid of it . . .
- AB2167, effective 01/01/2023
- (a) It is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available.
- (b) The court presiding over a criminal matter shall consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation.
- (c) The court shall have the discretion to determine the appropriate sentence according to relevant statutes and the sentencing rules of the Judicial Council.
- Argue the Legislature's findings, that are in uncodified section of the law.
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2167
 - (a) California's overreliance on incarceration has failed to improve public safety while disproportionately harming vulnerable and marginalized communities.
 - (b) California can safely reduce the number of people behind bars by making greater use of alternatives to incarceration, which often lead to better outcomes than incarceration, including reduced rearrest rates, better economic outcomes, and reduced racial disparities.
 - (c) Victims and survivors of violent crime report greater satisfaction when the case is resolved through restorative justice than do victims and survivors whose case is resolved through the traditional criminal court process.
 - (d) The California Committee on Revision of the Penal Code has recommended that California adopt a Penal Code section stating that alternatives to incarceration shall be considered in every case, similar to existing law in the federal system and in other states.
 - (e) 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.