2020

Legislative Digest

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Legislative Digest

— 2020 Edition —

by

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(Effective 1/1/2021)

Amends B&P 4145.5 to extend the sunset date by five years, from January 1, 2021 to January 1, 2026, in order to continue authorizing both of the following:

1. A physician or pharmacist being permitted to furnish hypodermic needles and syringes, without a prescription, to a person age 18 or older; and

2. a person age 18 or older being permitted to obtain hypodermic needles and syringes, without a prescription, from a physician or pharmacist.

Repeals B&P 4142, which prohibited the sale of a hypodermic needle or syringe without a prescription, except as otherwise provided in B&P 4141–4149 (Article 9 in Chapter 9 of Division 2 of the Business & Professions Code entitled "Hypodermic Needles and Syringes").

Repeals B&P 4326, which had contained two misdemeanor crimes. Subdivision (a) was the crime of obtaining a hypodermic needle or syringe by a false or fraudulent representation or by a forged or fictitious name. Subdivision (b) was the crime of using a hypodermic needle or syringe for a purpose other than that for which it was obtained.

[This bill also amends subdivision (c) of H&S 11364 to extend the sunset date by five years, from January 1, 2021 to January 1, 2026, in order to keep in place this exception to the crime of unlawfully possessing drug paraphernalia: hypodermic needles or syringes possessed solely for personal use.]

B&P 6070.5
(Amended)
(Ch. 36) (AB 3364)
(Effective 1/1/2021)

Advances the date by one year, from after January 31, 2023 to after January 31, 2022, by which attorneys must start meeting the requirements for mandatory continuing legal education (MCLE) on the subject of implicit bias. Attorneys must meet implicit bias training requirements for each MCLE compliance period ending after January 31, 2022 (i.e., implicit bias training requirements commence with the N–Z attorney group whose compliance period ends on January 31, 2023.) The State Bar continues to be tasked with adopting regulations by January 1, 2022.

B&P 6090.5
(Amended)
(Ch. 360) (AB 3362)
(Effective 1/1/2021)

Expands and clarifies the provisions for suspending, disbarring, or disciplining an attorney in several ways:

1. Instead of requiring the attorney to be a party, or an attorney for a party, in order to be disciplined, the attorney need only be acting on his or her own behalf or on behalf of someone else, whether or not in the context of litigation, when he or she seeks an improper agreement.

2. Prohibits an attorney from not only agreeing or seeking an agreement to not report specified actions, but also prohibits the soliciting of such an agreement.

3. Instead of prohibiting an agreement to not report *professional* misconduct to the State Bar, what is now prohibited is an agreement to not report "misconduct" to the State Bar.

4. Instead of prohibiting an agreement to have a *plaintiff* withdraw a disciplinary complaint or not cooperate with a State Bar investigation, the language now prohibits an agreement that a "complainant" withdraw a complaint or not cooperate so that the prohibition applies even if there is no civil lawsuit filed. Thus, if an attorney suspects that he or she may be subject to a malpractice action, he or she would be prohibited from trying to dissuade a client from filing a complaint even if the client does not file a civil action.

5. Instead of prohibiting an agreement that the record of a *civil* action for professional misconduct be sealed from review by the State Bar, the language now prohibits an agreement that the record of "any action or proceeding" be sealed from review by the State Bar.

Provides that this section applies to all agreements or attempts to seek agreements, irrespective of the commencement or settlement of a civil action.

Here is amended B&P 6090.5, in its entirety:

> (a) It is cause for suspension, disbarment, or other discipline for any licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation to solicit, agree, or seek agreement, that:

continued

(1) Misconduct or the terms of a settlement of a claim for misconduct shall not be reported to the State Bar.

(2) A complainant shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the State Bar.

(3) The record of any action or proceeding shall be sealed from review by the State Bar.

(b) This section applies to all agreements or attempts to seek agreements, irrespective of the commencement or settlement of a civil action.

B&P 6140
B&P 6141
(Amended)
(Ch. 360) (AB 3362)
(Effective 1/1/2021)

Sets the annual basic State Bar fee for active attorneys for 2021 at a maximum of $395 (a $43 decrease from the 2020 fee of $438). Various B&P sections continue to permit the State Bar to add on various other fees.

Decreases the annual fee for inactive lawyers from a maximum of $108, to a maximum of $97.40 (ninety-seven dollars and forty cents).

B&P 7028.16
B&P 7055
(Amended)
B&P 7057.5
(New)
B&P 7151
(Amended)
(Ch. 364) (SB 1189)
(Effective 1/1/2021)

Expands the felony crime, in B&P 7028.16, of engaging in the business of contracting without a license in connection with the offer or performance of repairs to a structure for damage caused by a natural disaster for which a state of emergency is declared, by adding an offer or performance of *improvements* to a structure *or property,* and by adding "adding to, or subtracting from, *grounds in connection therewith.*" Therefore, B&P 7028.16 now prohibits contracting without a license in connection with the offer or performance of repairs or improvements to a residential or nonresidential structure or property, or by adding to, or subtracting from, grounds in connection therewith, for damage or destruction caused by a natural disaster for which a state of emergency is proclaimed by the Governor or the President of the United States.

B&P 7028.16 remains a felony crime punishable pursuant to P.C. 1170(h) for 16 months, two years, or three years in jail and/or by a fine of up to $10,000.

continued

Amends B&P 7055 to add a fourth new contracting business classification called "Residential Remodeling Contracting." (The existing three are general building contracting, general engineering contracting, and specialty contracting.)

New B&P 7057.5 defines a residential remodeling contractor as a contractor whose principal contracting business is in connection with any project to make improvements to, on, or in an existing residential wood frame structure, and the project requires the use of at least three unrelated building trades or crafts for a single contract. Permits a residential remodeling contractor to take a prime contract for trades and crafts which may include, but are not limited to, drywall, finish carpentry, flooring, insulation, painting, plastering, roof repair, siding, tiling, etc.

Prohibits a residential remodeling contractor from:

1. Contracting for a project that includes fire protection, asbestos abatement, or well drilling unless the contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor;

2. Contracting to make structural changes to load-bearing portions of an existing structure; or

3. Contracting to install, replace, or substantially alter electrical, mechanical, or plumbing systems unless the contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor.

Amends B&P 7151 to expand the definition of "home improvement" beyond repairing, remodeling, altering, modernizing, or adding to residential property, to also include the reconstruction, restoration, or rebuilding of a residential property damaged or destroyed by a natural disaster for which a state of emergency was declared.

According to the legislative history, the purpose of the bill is to expand California's one-size-fits-all contracting license scheme so that contractors who normally do small remodeling projects are not taking on larger projects they may not have the qualifications for, such as the rebuilding of an entire home. After the 2017 Santa Rosa fires, some general contractors took on entire residential rebuilds when they lacked the necessary skills for the job.

continued

[This bill also amends P.C. 667.16 (a sentence enhancement for fraud in the repair of natural disaster damage) and 670 (a sentencing statute and increased fines for specified crimes relating to repairs for natural disaster damage.]

B&P 7150
B&P 7159
B&P 7159.10
(Amended)
(Ch. 158) (AB 2471)
(Effective 1/1/2021)

Extends the time a senior citizen has to cancel a home improvement contract (B&P 7159) or a service and repair contract (B&P 7159.10) from three business days to five business days.

Retains three business days as the cancellation deadline for *non*-senior citizens.

Defines "senior citizen" as an individual who is 65 years of age or older.

Provides that the five-day right to cancel applies to contracts entered into on or after January 1, 2021.

According to the legislative history of this bill, a substantial number of complaints are received from seniors about these kinds of contracts, which involve a senior's largest financial asset (a home) being placed at risk or even lost to foreclosure as a result of high-pressure sales and contracts that are misrepresented or misunderstood.

[This bill makes the same amendments to Civil Code 1689.5–1689.24 (home solicitation contracts and seminar sales solicitation contracts) and to Streets & Highways Code 5898.16 and 5898.17 (Property Assessed Clean Energy (PACE) assessment contracts). See the Civil Code section and the Streets & Highways Code section in this digest.]

B&P 7158
B&P 7159.5
B&P 7159.14
B&P 7161
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes a cross-reference to P.C. 1203.1b from each of these four sections because this bill repeals P.C. 1203.1b in its entirety as of July 1, 2021. (These B&P Code sections pertain to crimes relating to home improvement contracts and service and repair contracts.)

In each of these four B&P sections, the cross-reference to P.C. 1203.1b is replaced with actual language from P.C. 1203.1b. P.C. 1203.1b is repealed because AB 1869 eliminates numerous administrative fees and court costs so that convicted defendants no longer have to pay them. With

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the repeal of P.C. 1203.1b, these fees/costs are eliminated as of July 1, 2021: the cost of probation supervision and mandatory supervision; the cost of preparing a pre-sentence report; the cost to process a P.C. 1203.9 jurisdictional transfer when a probationer, or offender on mandatory supervision, moves to another county; and the cost of processing a request for interstate compact supervision when a supervised offender moves out of state. P.C. 1203.1b instructs the court on how to analyze a defendant's ability to pay specified **costs** and has **nothing to do with victim restitution**.

Drafting Errors
All four of these B&P sections require the offender to make full restitution to the victim "based on the person's ability to pay." This language was in the statutes before July 1, 2021, and remains in them after July 1, 2021. However, the phrase "ability to pay" cannot be used in reference to a victim restitution order because neither the California Constitution nor statutes permit ability to pay to be a consideration when a court is ordering victim restitution. An order for victim restitution is a victim's constitutional right. Article One, Section 28(b)(13) of the California Constitution requires that restitution "shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss."

P.C. 1202.4 requires the court to order full restitution without regard to the defendant's ability to pay. P.C. 1202.4(f) provides that the court "shall order full restitution" and P.C. 1202.4(g) provides that "a defendant's inability to pay shall not be a consideration in determining the amount of a restitution order." The "ability to pay" language should have been removed from these four B&P sections long ago. In 2016, AB 2295 deleted erroneous references to "ability to pay" and erroneous cross-references to P.C. 1203.1b in both P.C. 186.11 (the aggravated white-collar crime enhancement) and in P.C. 186.12 (theft or embezzlement of more than $100,000 from an elder or dependent adult.) The four B&P sections should have been included in AB 2295.

Neither P.C. 1203.1b nor its provisions should be in these four B&P sections, because P.C. 1203.1b pertains **only** to fees and costs and **not** to victim restitution. Previously, the language in these B&P sections was "shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) or Section 1203.1b of the Penal Code."

continued

Beginning July 1, 2021, language from P.C. 1203.1b is inserted into the four B&P sections and reads: "shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, defined as the overall capability of the defendant to reimburse the costs, or a portion of the costs, including consideration of, but not limited to, all of the following … (A) The defendant's present financial position. (B) The defendant's reasonably discernible future financial position … (C) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing. (D) Any other factor that may bear upon the defendant's financial capability to reimburse the county for costs." **The language uses the word "costs" instead of "restitution" and uses the phrase "reimburse the county.**" Even without the constitutional and statutory authorities outlined above, the actual language of the amendments would not be a limitation on how much victim restitution could be ordered because the language is specific to costs and what is owed to the county, and has nothing to do with victim restitution.

Any court interpreting these four B&P statutes, before or after July 1, 2021, would be compelled to judicially reform them to read "shall be ordered by the court to make full restitution to the victim" and delete everything that comes after regarding ability to pay and factors for the court to consider.

OVERVIEW OF AB 1869

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated in the Government Code include public defender/appointed counsel fees, criminal justice administration fees, county booking fees, and city booking fees. Fees eliminated in the Penal Code include public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of

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administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

B&P 17206
(Amended)
(Ch. 75) (AB 3020)
(Effective 1/1/2021)

Changes the distribution of civil penalties recovered by the City Attorney of San Diego in unfair competition (consumer protection) actions by providing that the entire penalty collected shall be paid to the treasurer of the City of San Diego (instead of being split between the city and the county).

For actions brought by all other city attorneys or city prosecutors throughout California, the penalty collected continues to be split evenly between the treasurer of the city and the treasurer of the county. Continues to provide that penalties collected by a district attorney or county counsel are paid to the county treasurer and that penalties collected by the Attorney General are split evenly between the county where the judgment was entered and the state's General Fund.

According to the legislative history, the City of San Diego sponsored this bill and the County of San Diego agreed with it. Both the City of San Diego and the County of San Diego bring unfair competition actions, and the city felt it was unfair to have to split the penalties with the county even if the district attorney was not involved with the case.

[Unfair competition actions include actions against fraudulent business practices and deceptive or misleading advertising. Interestingly, in 2019, the Governor vetoed AB 1477, which would have permitted city attorneys in any large city (with a population over 750,000) to keep all of the penalties unless a county agency participated in the prelitigation investigation of the case. The California State Association of Counties opposed the bill as did both Los Angeles County and Santa Clara County. In his veto message, the Governor said that the existing division of penalties is intended to ensure that both the city and the county have resources to enforce consumer protection laws and that revising longstanding practices by reducing resources allocated to counties puts in jeopardy important consumer protection services.]

B&P 17525
B&P 17526
(Amended)
(Ch. 162) (SB 342)
(Effective 1/1/2021)

Expands B&P 17525 beyond the misuse of domain names in a website, to also include subdomain names, and expands it beyond the misuse of a person's name in a website address to include misusing the name of a sports team, amusement park, event, venue, or exhibition that sells goods, such as tickets or memorabilia.

The purpose of the bill is to protect consumers from being deceived into purchasing goods online, such as event or sports tickets, or memorabilia, for a high markup from unscrupulous companies that manipulate Internet searches by using the venue or artist name in their website address in order to make consumers believe they are purchasing tickets or goods directly from a team, venue, or box office.

It is now unlawful for a person, with bad faith intent, to register, traffic in, use, or misspell a domain name or a subdomain name that is identical or confusingly similar to either of the following:

1. The name of another living person or deceased personality; or

2. The name of any of the following used to sell, resell, offer to sell, or offer to resell, goods: (a) A specific professional or collegiate sports team or league, theme or amusement park, or venue where concerts, sports, or other live entertainment events are held; or (b) A specific event, performance, or exhibition, including the name of a person, professional or collegiate team, performance, group, or entity scheduled to perform or appear at that event.

Exceptions
Provides that B&P 17525 does not apply when a name registered as a domain name or a subdomain name is either:

1. A personal name connected to a work of authorship, including, but not limited to, fictional or nonfictional entertainment, and dramatic, literary, audiovisual, or musical works; or

2. The person whose personal name is used, or the authorized agent of an entity whose name is used, consents to the registration, trafficking, or use of the name as a domain or subdomain name.

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Private Right of Action
Permits a party who has lost money or property as a result of a violation of B&P 17525 to bring a civil action to recover actual, consequential, and punitive damages, and if the party wins, reasonable attorney's fees. Provides that this private remedy does not restrict other available remedies, including, but not limited to, the Model State Trademark Law (B&P 14200–14272) or the Unfair Practices Act (B&P 17000–17101).

Bad Faith
Provides that a person who unlawfully registers, traffics in, or uses a domain or subdomain name is presumed to have done so with a bad faith intent, and that this presumption affects the burden of proof.

B&P 17526 continues to set forth the factors the court may consider in determining bad faith and makes changes conforming to the amendments of B&P 17525.

Definitions
B&P 17525 defines "goods" as including tickets to a concert, sporting event, or other live entertainment event, as well as clothing and memorabilia bearing the name or trademark of a sports or entertainment entity.

Existing B&P 17527 defines "domain name" as any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

According to a quick Internet search, a subdomain name normally contains a second word before the main domain name and is used to organize or divide web content into sections.

B&P 21628
(Amended)
(Ch. 185) (AB 1969)
(Effective 1/1/2023)

Beginning January 1, 2023, eliminates the requirement that the personal identifying information of a person who sells an item to a secondhand dealer (e.g., pawnshop) or coin dealer be reported to law enforcement when the seller verifies his or her identity with a Matricula Consular. Continues to provide that when a Matricula Consular is used as identification when selling goods, another form of identification bearing an address must be shown.

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(A Matricula Consular is an identification card that Mexican consulates issue to Mexican citizens living outside Mexico.)

Beginning January 1, 2023, the dealer is required to record and maintain the personal identifying information of a seller using a Matricula Consular, but not send it through the statewide electronic reporting system known as the California Pawn and Secondhand Dealer System (CAPSS), operated by the Dep't of Justice.

Requires secondhand dealers and coin dealers to record and maintain the following:

1. the name, current address, and Matricula Consular number of the seller for three years;
2. the certification by the seller that he or she is the owner of the property being sold or pledged, or has authority from the owner to sell it; and
3. a legible fingerprint taken from the seller.

Provides that if local law enforcement notifies the secondhand dealer or coin dealer that the item sold has been reported lost or stolen, the secondhand dealer or coin dealer is required to provide the seller's identifying information. (Any law enforcement officer who receives information that an item of sold property is stolen will have to take the second step of obtaining the seller's personal identifying information from the pawnshop in cases where a Matricula Consular was used, because the personal information will not be available in CAPSS.)

According to the legislative history, it is "possible" and "conceivable" that Immigration & Customs Enforcement (ICE) might obtain identifying information on non-citizens from the CAPSS system, so the purpose of the bill is to prevent that.

B&P 22598
B&P 22599
(New)
(Ch. 125) (AB 2149)
(Effective 1/1/2021)

Creates the "Fair Food Delivery Act of 2020" in new Chapter 22.4 in Division 8 of the Business & Professions Code. New B&P 22599 prohibits a food delivery platform from arranging for the delivery of an order from a food facility without first obtaining an agreement with the food facility expressly authorizing the food delivery platform to take orders and deliver meals prepared by the food facility. New B&P 22598 defines "food delivery platform" as an online

continued

business that acts as an intermediary between consumers and multiple food facilities to submit food orders and arrange delivery of the order from the food facility to the consumer. (Examples are Doordash and Grubhub.)

According to the legislative history, the bill addresses several concerns of restaurants and eateries about third party deliverers, including not knowing that they have been listed as an establishment that the food platform delivers for, not being able to handle extra orders, incorrect menus being posted on the deliverer's app, and the lack of contact with customers when a food delivery platform is involved. The purpose of the bill is to require the agreement of the food establishment before a food delivery platform starts delivering its food. According to the legislative history, a violation of this new chapter would constitute an unlawful business practice pursuant to B&P 17200 for which a district attorney, county counsel, city attorney, or the Attorney General could bring an action to recover a civil penalty.

B&P 26015
(Amended)
(Ch. 14) (AB 82)
(Effective 6/29/2020)

Provides that the chief of enforcement and all investigators, inspectors, and deputies of the Bureau of Cannabis Control identified by the Director of Consumer Affairs have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them in investigating the laws administered by the Department of Consumer Affairs or commencing any criminal prosecution arising from any investigation conducted under these laws. [Division 10 of the Business & Professions Code is entitled "Cannabis" and spans B&P 26000–26250.]

Authorizes the Bureau of Cannabis Control (which is within the Department of Consumer Affairs) to employ individuals who are not peace officers to provide investigative services.

Uncodified Section 15 of this bill sets forth the Legislature's declaration that the amendment to B&P 26015 implements the Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64, November 2016) and is consistent with and furthers the intent of the Act. (Proposition 64 permits amending some of its provisions by a majority vote of the Legislature and other provisions by a two-thirds vote, if the amendment is consistent with and furthers the intent of the Act. This bill received more than a two-thirds vote in both the Senate and the Assembly.)

B&P 26104
(Amended)
(Ch. 309) (SB 1244)
(Effective 1/1/2021)

Permits a cannabis testing laboratory to receive and test samples of cannabis from a state or local law enforcement agency, a prosecuting agency, or a regulatory agency. Provides that testing for these agencies is not commercial cannabis activity and shall not be arranged or overseen by the Bureau of Cannabis Control.

According to the legislative history of this bill, some crime labs do not have the capability of testing for contaminants in cannabis or of conducting a quantitative analysis of the amount of THC (tetrahydrocannabinol, the main active ingredient in cannabis) present in order to prove that the substance is cannabis. This bill was sponsored by the Los Angeles City Attorney as a consumer protection measure. The Los Angeles City Attorney plans to work with the Los Angeles Police Department Forensic Science Division to train cannabis testing labs regarding chain of custody and proper handling of evidence.

Civil Code

Civil Code 43.102
(New)
(Ch. 352) (AB 2717)
(Effective 1/1/2021)

Provides immunity from civil liability for a Good Samaritan who rescues a child age six or younger from a motor vehicle under specified circumstances. Provides that there shall not be any civil liability for property damage or trespass to a motor vehicle if the damage was caused while the person was rescuing a child age six or younger in accordance with new H&S 1799.101.

[This is similar to the immunity from civil liability in existing Civil Code 43.100 for rescuing an animal from a motor vehicle.]

This bill also creates new H&S 1799.101 to set forth detailed provisions regarding the rescue of a child from a motor vehicle by a civilian, or by a peace officer, firefighter, or emergency responder. Provides that a person who removes a child from a motor vehicle because he or she reasonably believes the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances, is not criminally liable if the person takes the steps set forth in H&S 1799.101. See H&S 1799.101 in the Health & Safety Code section of this digest for more information.

Civil Code 1632
(Amended)
(Ch. 161) (AB 3254)
(Effective 1/1/2021)

Adds "any other person who will be signing the contract or agreement" to those (a party to the contract) who must be provided a translation of the contract in the language in which it was negotiated. Therefore, a party *and* co-signers to a contract are required to receive a translation of the contract in the appropriate language. This continues to apply to any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

Civil Code 1689.5
Civil Code 1689.6
Civil Code 1689.7
Civil Code 1689.13
Civil Code 1689.20
Civil Code 1689.21
Civil Code 1689.24
(Amended)
(Ch. 158) (AB 2471)
(Effective 1/1/2021)

Extends the time a senior citizen has to cancel a home solicitation contract or a seminar sales solicitation contract, from three business days to five business days. [Retains three business days as the cancellation deadline for *non*-senior citizens.]

Defines "senior citizen" as an individual who is 65 years of age or older.

Provides that the five-day right to cancel applies to contracts entered into on or after January 1, 2021.

According to the legislative history of this bill, a substantial number of complaints are received from seniors about these kinds of contracts, which involve a senior's largest financial asset (a home) being placed at risk or even lost to foreclosure as a result of high-pressure sales and contracts that are misrepresented or misunderstood.

[This bill makes the same amendments to B&P 7150, 7159 (home improvement contracts), and 7159.10 (service and repair contracts), and to S&H 5898.16 and 5898.17 (Property Assessed Clean Energy (PACE) assessment contracts). See the Business & Professions Code section and the Streets & Highways Code section in this digest.]

Civil Code 1798.145
(Amended)
(Proposition 24)
(November 2020)
(Effective 1/1/2023)

Civil Code 1798.145 is part of the "California Privacy Rights Act of 2020" (Proposition 24, spanning Civil Code 1798.100–1798.199.100) that was passed by voters on November 3, 2020.

Amends subdivision (a) to add that law enforcement agencies, including police and sheriff's departments, may direct a business pursuant to a law enforcement agency-approved investigation with an active case number **not** to delete a consumer's personal information. Requires a business that receives this direction to not delete the personal information for 90 days in order to allow the law enforcement agency to obtain a court-issued subpoena, order, or warrant to obtain a consumer's personal information. Permits a law enforcement agency, for good cause and only to the extent necessary for investigatory purposes, to direct a business not to delete a consumer's personal information for additional 90-day periods. Requires a business that has received a direction to not delete a

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consumer's personal information, to retain the information for law enforcement even if a consumer has requested deletion of his or her personal information.

Retains provisions requiring businesses to comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

Section 31 of Proposition 24 provides that most of its provisions are operative on January 1, 2023, and that they apply to personal information collected by a business on or after January 1, 2022.

Civil Code 1946.7
(Amended)
(Ch. 205) (SB 1190)
(Effective 1/1/2021)

Extends provisions permitting a tenant to terminate a lease before its expiration where the tenant or the tenant's householder member has been a victim of a specified crime, to situations where a tenant's immediate family member has been the victim of a specified crime, even if the family member did not live with the tenant and even if the crime occurred away from the residence.

Defines "immediate family member" as a parent, stepparent, spouse, child, child-in-law, stepchild, sibling of a tenant, or any person living in the tenant's household at the time of the crime who has a relationship with the tenant that is substantially similar to that of a family member.

Adds the following to the list of crimes (domestic violence, sexual assault, stalking, human trafficking, and elder abuse) that this code section applies to:

1. a crime that causes bodily injury or death;
2. a crime that includes the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument; or
3. a crime that includes the use of force against the victim or a threat of force against the victim.

Continues to require that one of several specified documents be attached to the notice to terminate the tenancy (temporary restraining order, police report, or qualified third-party statement) and adds a fourth type that may be attached instead: any other form of documentation that reasonably verifies that the crime occurred.

continued

Adds that a "victim of violent crime advocate" qualifies as a third party for purposes of a third-party statement. Defines "victim of violent crime advocate" as a person who is employed, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of violent crimes for a reputable agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court, a law enforcement, or a prosecution agency. (Thus, such an advocate working for a district attorney's office could sign a third-party statement that is attached to a tenancy termination notice.)

Provides that if an immediate family member is the victim of a specified crime and did not live in the tenant's household and the crime did not occur in the dwelling unit or within 1,000 feet of it, the tenant is required to submit a written statement that the immediate family member was the victim of a specified crime, that the tenant intends to relocate as a result, and that the tenant is relocating to increase the safety, physical well-being, emotional well-being, psychological well-being, or financial security of the tenant or the immediate family member.

Code of Civil Procedure

C.C.P. 197
(Amended)
(Ch. 230) (SB 592)
(Effective 1/1/2021)

Expands the list of potential trial jurors beyond the Dep't of Motor Vehicles (DMV) and voter registration databases, to also include the list of resident state tax filers. Requires the Franchise Tax Board to annually furnish the jury commissioner of each county with a list of resident state tax filers for that county, starting on November 1, 2021. Defines "list of resident state tax filers" as a list that includes the name, date of birth, principal residence address, and county of principal residence of persons who are 18 years of age or older and have filed a California resident income tax return for the preceding taxable year. Provides that beginning January 1, 2022, the list of resident state tax filers, the list of registered voters, and the DMV list of licensed drivers and identification cardholders shall be considered inclusive of a representative cross-section of the population.

According to the legislative history, the purpose of the bill is to expand jury pools so that they are more representative of the community. The legislative history claims that "California's justice system consistently fails … to produce potential jury pools that are truly representative of the community" and claims that obtaining jurors only from DMV and voter databases tends to produce jurors who "appear to be more affluent and whiter than the general population of California."

[This bill also creates new Revenue & Taxation Code 19548.4 and 19585 to require the Franchise Tax Board to furnish each jury commissioner with that county's list of resident state tax filers and to revise the California resident income tax return to include a space for the taxpayer's principal residence address and county of principal residence.]

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

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

continued

January 1, 2022. Provides that the new rules will apply to civil cases beginning January 1, 2026.

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

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

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

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

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

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

Making the Objection and Stating Reasons For a Challenge
Provides that when an objection is made to a peremptory challenge, the party exercising the challenge must state the reasons the challenge was exercised. Does **not** require the

continued

objector to make a prima facie case of discrimination. The objection itself triggers the requirement to state the reasons for the peremptory challenge.

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

Evaluating an Objection to a Peremptory Challenge
Requires the trial court to evaluate the reasons given to justify the peremptory challenge in light of the totality of the circumstances. Requires the court to consider only the reasons actually given and prohibits the court from speculating on, or assuming the existence of, other possible justifications.

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

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

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

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

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

continued

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

1. Whether any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

continued

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

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

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

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

Reasons For Peremptory Challenges That Will Be Presumed to Be Invalid

Lists a number of reasons for peremptory challenges that will be presumed to be invalid, unless the party exercising the challenge can show by clear and convincing evidence that an objectively reasonable person would view the rationale as **un**related to a prospective juror's race, ethnicity, gender, gender identity, sexual orientation, nation origin, religious affiliation, or perceived membership in any of these groups, and that the reasons articulated bear on the prospective juror's ability to be fair and impartial in the case. A list of the 13 reasons that will be presumed invalid:

1. Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.
2. Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.
3. Having a close relationship with people who have been stopped, arrested, or convicted of a crime.
4. A prospective juror's neighborhood.
5. Having a child outside of marriage.

continued

6. Receiving state benefits.
7. Not being a native English speaker.
8. The ability to speak another language.
9. Dress, attire, or personal appearance.
10. Employment in a field that is disproportionately occupied by members listed in any of the cognizable groups or that serves a population disproportionately comprised of members of a cognizable group.
11. Lack of employment or underemployment of the prospective juror or prospective juror's family member.
12. A prospective juror's apparent friendliness with another prospective juror of the same cognizable group.
13. Any justification that is similarly applicable to a questioned prospective juror or jurors, who are not members of the same cognizable group as the challenged prospective juror, but were not the subject of a peremptory challenge by that party. The unchallenged prospective juror or jurors need not share any other characteristics with the challenged prospective juror in order for a peremptory challenge relying on this justification to be considered presumptively invalid.

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

Defines "clear and convincing," which is the standard for overcoming a presumption that a reason for a peremptory challenge is not valid:

> Clear and convincing refers to the degree of certainty the factfinder must have in determining whether the reasons given for the exercise of a peremptory challenge are unrelated to the prospective juror's cognizable group membership, bearing in mind conscious and unconscious bias. To determine that a presumption of invalidity has been overcome, the factfinder shall determine that it is highly probable that the reasons given for the exercise of a peremptory challenge are unrelated to conscious or unconscious bias and are instead specific to the juror and bear on that juror's ability to be fair and impartial in the case.

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Additional Presumptively Invalid Reasons for Peremptory Challenges That Have Historically Been Associated With Improper Discrimination in Jury Selection and That Must Be Observed By the Court or Objecting Counsel
Lists the following reasons for peremptory challenges that have historically been associated with **im**proper discrimination:

1. The prospective juror was inattentive, or staring, or failing to make eye contact.
2. The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.
3. The prospective juror provided unintelligent or confused answers.

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

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

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

Appellate Review
Sets forth how the denial of an objection to a peremptory challenge shall be reviewed by an appellate court by providing that review shall be de novo, with the trial court's

continued

express factual findings reviewed for substantial evidence. Prohibits the appellate court from imputing to the trial court any findings, including findings of a prospective juror's demeanor, that the trial court did not expressly state on the record. Requires the appellate court to consider only reasons actually given for a peremptory challenge and prohibits the court from speculating as to, or considering, reasons that were not given to explain either the party's use of the peremptory challenge or the party's failure to challenge similarly situated jurors who were not members of the same cognizable group as the challenged juror, regardless of whether the moving party made a comparative analysis argument in the trial court. **Provides that if the appellate court determines that the objection was erroneously denied, the error shall be deemed prejudicial**, the judgment shall be reversed, and the case remanded for a new trial.

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

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

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

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

C.C.P. 340.16
(Amended)
(Ch. 246) (AB 3092)
(Effective 1/1/2021)

Revives time-barred claims for damages resulting from sexual assault that was committed between January 1, 1983 and January 1, 2019, by a physician employed by or associated with the University of California at Los Angeles (UCLA). Even if the statute of limitations has expired, a civil

continued

suit is permitted to be brought for sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician while employed by a medical clinic owned and operated by UCLA, or by a physician who held active privileges at a hospital owned and operated by UCLA, at the time the sexual assault or inappropriate contact occurred between January 1, 1983 and January 1, 2019.

Permits a civil suit to proceed if it is already pending in court on January 1, 2021, or, if not already filed by January 1, 2021, it is permitted to be commenced between January 1, 2021 and December 31, 2021.

Provides that this revival of time-barred actions does not apply to a claim that has already been litigated to finality before January 1, 2021, or to a claim that was compromised by a written settlement agreement between the parties entered into before January 1, 2021.

According to the legislative history, this bill is a response to numerous sexual misconduct allegations against a doctor at UCLA over many years. More than one hundred women have filed lawsuits against the doctor and against the University of California.

C.C.P. 1218
(Amended)
(Ch. 283) (AB 2338)
(Effective 1/1/2021)

Amends subdivision (c) to provide the court with the alternative of granting probation instead of imposing imprisonment and/or community service when a person is found in contempt of court for failing to comply with a court order pursuant to the
Family Code.

C.C.P. 1218(a) is **not** amended. It continues to provide for a punishment of up to five days in jail and/or a fine of up to $1,000 when a person is found guilty of contempt. The amendment is to subdivision (c), which pertains to a finding of contempt based on the failure to comply with a Family Code court order.

Subdivision (c) continues to provide that for a finding of contempt for failing to comply with a court order pursuant to the Family Code, the court shall order the following unless it grants probation instead of, or in addition to, imprisonment and community service:

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1. For a first finding of contempt: up to 120 hours of community service or imprisonment for up to 120 hours, for each count of contempt.

2. For a second finding of contempt: up to 120 hours of community service in addition to imprisonment of up to 120 hours, for each count of contempt.

3. For a third or subsequent finding of contempt: imprisonment of up to 240 hours and community service of up to 240 hours, for each count of contempt, in addition to an administrative fee for the community service program.

Amended subdivision (c) adds the option of probation instead of, or in addition to, imprisonment and/or community service, by providing that in lieu of imprisonment, community service, or both, the court may grant probation or a conditional sentence for a period of up to one year upon a first finding of contempt, for a period of up to two years upon a second finding of contempt, and for a period of up to three years upon a third or subsequent contempt finding. Provides that "probation" and "conditional sentence" have the same meanings as in existing P.C. 1203(a).

["Conditional sentence" is another way to say "court probation" or "informal probation" where an offender is on probation without being formally supervised by a probation officer. The definition of "probation" includes supervision by a probation officer.]

Therefore, when a contempt finding is made for failing to comply with a Family Code court order, a court may grant probation instead of imprisonment and community service, or a court may grant probation and imprisonment and/or community service.

Note that amended C.C.P. 1218(c) is an exception to newly amended P.C. 1203a, which limits to one year the probation period in a misdemeanor case unless the crime has a specific probation length within its provisions. See the Penal Code section of this digest for more information.

Education Code

Education C. 48263
Education C. 48267
Education C. 48268
Education C. 48269
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Makes several amendments to these truancy and school behavior statutes to eliminate a school being required to report a student to the juvenile court for being "habitually insubordinate or disorderly during attendance at school," and to eliminate the authority of a county superintendent of schools to petition the juvenile court about a truant minor.

Amends Education C. 48263 to eliminate the authority of a county superintendent of schools to petition the juvenile court about a truant minor. Subdivision (b)(2) had provided that in a county that does *not* have a truancy mediation program, the school attendance review board or probation officer may direct the county superintendent to petition the juvenile court when a truant pupil has failed to respond to the directives of the school attendance review board or the probation officer. These provisions are now deleted.

Education C. 48263 continues to provide that if a minor is a habitual truant or chronic absentee, or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to an attendance review board or to the probation department. It also continues to provide that if a school attendance review board or probation officer determines that available community services cannot resolve the truancy or insubordination problem, the district attorney may be notified.

Amends Education C. 48267, 48268, and 48269 to delete references to a pupil who is habitually insubordinate or disorderly during attendance at school, because this is no longer a basis for the juvenile court to have jurisdiction over a minor pursuant to W&I 601. This bill amends W&I 601 to delete the following as a basis for juvenile court jurisdiction: a minor's "persistent or habitual refusal to obey the reasonable and proper directions of school authorities." Education C. 48267 is amended to delete a reference to pupils adjudged as habitually insubordinate or disorderly by the juvenile court. Section 48267 continues to require that a student who has been found to be a ward of the court pursuant to W&I 602 and is required as a condition of probation to attend school and is reported as truant, or as tardy without a valid excuse, must be brought to the attention of the juvenile court and the student's probation or parole officer, within 10 days of the violation.

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This bill amends W&I 601 to delete the refusal to obey school authorities as a basis for juvenile court jurisdiction, but continues to provide that these circumstances **are** within the jurisdiction of the juvenile court:

1. Four or more truancies within one school year; or

2. A school attendance review board or probation officer determines that available public and private services are not sufficient or not appropriate to correct the habitual truancy of the minor; or

3. The minor fails to respond to directives of a school attendance review board or probation officer or to services provided.

W&I 601 is also amended to remove the authority of a school administrator to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to W&I 601.

Uncodified Section One of this bill sets forth a number of declarations by the Legislature, including these:

1. It is the intent of the Legislature that cities and counties work closely with youth, parents, local educational agencies, community partners, and system officials "to serve and protect youth only as needed, avoiding any contact with the juvenile justice system."

2. It is the intent of the Legislature that truancy and other status offenses "be diverted from citation, arrest, and court."

3. "Youth of color are disproportionately referred to probation."

[This bill also amends W&I 236, 601, 601.3, 653.5, and 654, and adds new W&I 651.5. See the Juveniles section of this digest.]

Elections Code

Elections C. 18302
(Amended)
(Ch. 109) (SB 739)
(Effective 9/18/2020)

Expands the misdemeanor crime in subdivision (b) of distributing false election materials by adding a prohibition against distributing "false or misleading information regarding the qualifications to apply for, receive, or return a vote by mail ballot."

Continues to require that the crimes in subdivision (b) require actual knowledge and the intent to deceive. Continues to provide that distribution includes by mail, radio, television broadcast, telephone call, text message, email, or any other electronic means.

Subdivision (b) continues to contain the misdemeanor crimes of distributing the incorrect location of a vote center or vote by mail drop box, distributing false or misleading information regarding the qualifications to vote or to register to vote, and distributing false or misleading information about the date of an election or the days, dates, or times voting may occur.

Subdivision (a) remains the misdemeanor crime of knowingly mailing or distributing literature to a voter that includes a false precinct polling place.

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Environmental Law

Gov't C. 8670.64
(Amended)
(Ch. 119) (AB 3214)
(Effective 1/1/2021)

Doubles the minimum and maximum fines for felony and misdemeanor oil crimes such as discharging or spilling oil into state waters and failing to clean up or remove spilled oil. Also adds an additional fine. Increases the minimum fine from $5,000 to $10,000 and increases the maximum fine from $500,000 to $1 million. Adds a discretionary fine of up to $1,000 per gallon spilled in excess of 1,000 gallons of oil.

Doubles the minimum and maximum fines for misdemeanor and felony crimes such as making false or misleading oil spill reports and failing to notify the Office of Emergency Services about an oil spill. Continues to provide that these crimes are misdemeanors for a first violation and felonies for a second or subsequent violation. The misdemeanor minimum fine is increased from $2,500 to $5,000 and the maximum fine is increased from $250,000 to $500,000. The minimum felony fine is increased from $5,000 to $10,000 and the maximum fine is increased from $500,000 to $1 million.

According to the legislative history, this bill is in response to the 2015 Santa Barbara oil spill for which the Santa Barbara County District Attorney's Office obtained convictions in criminal court against the company responsible for the oil spill.

Pub. Res. C. 14547
(New)
Pub. Res. C. 14549.3
(Amended)
(Ch. 115) (AB 793)
(Effective 1/1/2021)

Requires plastic beverage containers sold by a beverage manufacturer and that are subject to the California Redemption Value, to contain an increasing percentage of post-consumer recycled plastic content by creating a graduated plan that mandates at least 50% recycled plastic by January 1, 2030. Requires at least 15% recycled plastic between January 1, 2022 and December 31, 2024; at least 25% recycled plastic between January 1, 2025 and December 31, 2029; and at least 50% recycled plastic by January 1, 2030.

Provides that beverage manufacturers that do not meet the minimum recycled plastic content requirements will be subject to an annual administrative penalty beginning January 1, 2023.

Contains provisions empowering the Director of Resources Recycling and Recovery to adjust the minimum percentages

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at the request of the beverage industry or on his or her own initiative, and sets forth factors to consider.

Prohibits a city, county, or other local government jurisdiction from adopting an ordinance regulating the minimum recycled plastic content of a plastic beverage container.

Does not apply to a refillable plastic beverage container.

Pub. Res. C. 18017
(New)
(Ch. 115) (AB 793)
(Effective 1/1/2021)

Adds that these types of rigid plastic bottles are exempt from the provisions of Pub. Res. C. 18010–18016 pertaining to rigid plastic containers and bottles: medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products. Thus, the labeling requirements for rigid plastic containers and bottles set forth in Pub. Res. C. 18015 do not apply to specified medical containers and bottles, and thus the infraction crime in section 18016 making it unlawful to manufacture a rigid plastic container that is not properly labeled will also not apply.

Evidence Code

Evidence C. 1010.5
(Amended)
(Ch. 370) (SB 1371)
(Effective 1/1/2021)

Makes a non-substantive amendment to correct an erroneous cross-reference to the Business & Professions Code.

Evidence C. 1010.5 provides that a communication between a patient and an educational psychologist is privileged to the same extent as a communication between a patient and a psychotherapist. It had contained a cross-reference to a non-existent Business & Professions section. That cross-reference is now corrected to Chapter 13.5 of Division 2 of the Business & Professions Code, beginning with section 4989.10. Chapter 13.5 is entitled "Licensed Educational Psychologists."

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Family Code

Family C. 6320
(Amended)
(Ch. 248) (SB 1141)
(Effective 1/1/2021)

Adds a detailed and expanded definition of "disturbing the peace" in the context of domestic violence restraining orders, that includes coercive control. Disturbing the peace is one of the grounds on which a restraining order may be issued.

Provides that "disturbing the peace" of the other party means conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. Provides that this conduct may be committed directly or indirectly, including through the use of a third party, and by any method or means, including, but not limited to, the telephone, online accounts, text messages, Internet-connected devices, or other electronic technologies. Also provides that this conduct includes, but is not limited to, "coercive control," which is defined as a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.

Sets forth examples of behavior that constitutes coercive control when **un**reasonably engaged in:

1. Isolating the other party from friends, relatives, or other sources of support.

2. Depriving the other party of basic necessities.

3. Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.

4. Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

Existing Family C. 6320 permits the court to issue an ex parte temporary order enjoining a party from a number of actions such as attacking, threatening, sexually assaulting, battering, harassing, telephoning, contacting, and/or disturbing the peace of the other party. Existing Family C. 6340 and 6345 permit the court to issue orders prohibiting this kind of conduct, for up to five years, after notice and a hearing.

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This bill codifies cases finding that disturbing the peace of the other party includes conduct that destroys the mental or emotional calm of the other party. See *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497; *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 821–822; and *N.T. v. H.T.* (2019) 34 Cal.App.5th 595, 602.

Food & Agricultural Code

Food & Ag. C. 31108.3
Food & Ag. C. 31752.1
(New)
(Ch. 108) (SB 573)
(Effective 1/1/2021)

Requires a public animal control agency or shelter, a society for the prevention of cruelty to animals shelter, a humane society shelter, or a rescue group to do one of two things before releasing a dog or cat to an owner reclaiming it, or to a new owner adopting or buying it:

1. microchip the animal with current information on the owner; or

2. if the agency, shelter, or group does not have microchipping capability on location, obtain an agreement from the reclaiming or new owner that proof of microchipping will be presented within 30 days to the agency, shelter, or group.

Food & Ag. C. 31108.3 applies to dogs and 31752.1 applies to cats. The new sections are virtually identical.

Provides that microchipping is not required if a licensed veterinarian certifies in writing that the dog or cat is medically unfit for the microchipping procedure because it has a physical condition that would be substantially aggravated by the procedure. Also provides that microchipping is not required if the reclaiming or new owner signs a form stating that the cost of microchipping would impose an economic hardship on the owner.

Provides that beginning January 1, 2022, an agency, shelter, or group that violates this section is subject to a civil penalty of one hundred dollars ($100).

Government Code

Gov't C. 1031
(Amended)
Gov't C. 1031.3
(New)
(Ch. 322) (AB 846)
(Effective 1/1/2021)

Adds the following to the list of minimum standards in Gov't C. 1031 for a peace officer: being free from "bias against race or ethnicity, gender, nationality, religion, disability, and sexual orientation, that might adversely affect the exercise of the powers of a peace officer." Retains existing standards such as being at least 18 years old, being of good moral character, holding a high school diploma or equivalency, and being free from any physical, emotional, or mental condition that might adversely affect the exercise of peace officer powers.

New Gov't C. 1031.3 requires the Commission on Peace Officer Standards and Training (POST), by January 1, 2022, to review and update the regulations and screening materials for a peace officer emotional and mental condition evaluation and to add to the evaluation the identification of explicit and implicit bias towards race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

[This bill also adds new P.C. 13651 to require any entity that employs peace officers to review the peace officer job description used in recruiting and to make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, and that de-emphasize the paramilitary aspects of the job.]

Gov't C. 6111
(New)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Beginning July 1, 2021, provides that the balance an offender owes for specified administrative fees and costs will be canceled, by providing that the balance of any court-imposed costs "is unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated." New Gov't C. 6111 specifies these sections: Gov't C. 27712, 29550(c) and (f), 29550.1, 29550.2, and 29550.3.

For more information, see the digest entry for these sections, below.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated in the Government Code include public defender/appointed counsel fees, criminal justice administration fees, county booking fees, and city booking fees. Fees eliminated in the Penal Code include

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public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

Gov't C. 6701
(Amended)
(Ch. 14) (AB 82)
(Effective 6/29/2020)

Permits the Legislature, if Cesar Chavez Day (March 31st) falls on a Tuesday, Wednesday, or Thursday, to observe the holiday on the preceding Friday, or on the preceding Monday, or on the following Friday.

Gov't C. 7286.5
(New)
(Ch. 324) (AB 1196)
(Effective 1/1/2021)

Prohibits a law enforcement agency from authorizing the use of a carotid restraint or choke hold by any peace officer employed by the agency.

Defines "carotid restraint" as a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.

Defines "choke hold" as any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe.

[A number of law enforcement agencies opposed this bill. The legislative history contains a statement from the Association of Los Angeles Deputy Sheriffs that the bill should include language that these restraints are not prohibited in a life or death situation.]

Gov't C. 8670.64
(Amended)
(Ch. 119) (AB 3214)
(Effective 1/1/2021)

Doubles the minimum and maximum fines for felony and misdemeanor oil crimes such as discharging or spilling oil into state waters and failing to clean up or remove spilled oil. Also adds an additional fine. Increases the minimum fine from $5,000 to $10,000 and increases the maximum fine from $500,000 to $1 million. Adds a discretionary fine of up to $1,000 per gallon spilled in excess of 1,000 gallons of oil.

Doubles the minimum and maximum fines for misdemeanor and felony crimes such as making false or misleading oil spill reports and failing to notify the Office of Emergency Services about an oil spill. Continues to provide that these crimes are misdemeanors for a first violation and felonies for a second or subsequent violation. The misdemeanor minimum fine is increased from $2,500 to $5,000 and the maximum fine is increased from $250,000 to $500,000. The minimum felony fine is increased from $5,000 to $10,000 and the maximum fine is increased from $500,000 to $1 million.

According to the legislative history, this bill is in response to the 2015 Santa Barbara oil spill for which the Santa Barbara County District Attorney's Office obtained convictions in criminal court against the company responsible for the oil spill.

Gov't C. 12525.3
(New)
(Ch. 326) (AB 1506)
(Effective 1/1/2021)

Requires a "state prosecutor" (defined as the Attorney General) to investigate officer-involved shootings that result in the death of an unarmed civilian. Authorizes the state prosecutor to investigate and gather facts and to prepare and submit a written report. Requires a report to include a statement of facts, a detailed analysis and conclusion for each investigatory issue, and recommendations to modify the policies and practices of the law enforcement agency, as applicable.

Provides that if criminal charges against the officer are warranted, the state prosecutor is authorized to initiate a criminal action and prosecute the officer.

Requires the state prosecutor to post and maintain on a public Internet website each written report prepared pursuant to this new section, appropriately redacting any information in the report that is required by law to be kept confidential.

continued

Requires the Attorney General, beginning July 1, 2023, to operate a Police Practices Division within DOJ to, upon the request of a local law enforcement agency, review the use of deadly force policies of that local agency and make specific and customized recommendations.

Provides that this new section shall be implemented by DOJ if the Legislature makes an appropriation for it.

Defines "unarmed civilian" as anyone who is not in possession of a deadly weapon. Defines "deadly weapon" as including, but not limited to, a loaded weapon from which a shot may be discharged, a switchblade knife, a pilum ballistic knife, a metal knuckle knife, a dagger, a billy, a blackjack, plastic knuckles, or metal knuckles.

[*NOTES*: The bill says nothing about whether a local police agency may or may not conduct its own investigation or an internal affairs investigation.

Subdivision (b)(1) provides that the state prosecutor "shall investigate," but subdivision (b)(2) provides that the state prosecutor is "authorized" to investigate, write a report, and to file criminal charges if warranted. If the intent of the bill is to require the state prosecutor to investigate *and* to write a report *and* to file criminal charges if warranted, subdivision (b)(2) should have provided that "The state prosecutor is ~~authorized~~ *required* to do all of the following …:"]

Gov't C. 15301.3
(Amended)
(Ch. 145) (AB 2275)
(Effective 9/25/2020)

Changes the notification requirements a city or county must make to local law enforcement when an armory is used to house homeless people. Instead of requiring a city or county to "ensure" that officers conduct periodic visits to the armory each night it is in operation, the language is changed to require a city or county to "notify" officers from the local law enforcement agency and "request" that they make periodic visits.

Continues to require that an armory shelter provide uniformed security personnel from one hour before the shelter opens until one hour after lights out.

The legislative history of the bill points out that a local agency operating a shelter does not necessarily have direct oversight of local law enforcement officers, and therefore can request services, but not necessarily ensure them.

Gov't C. 25303.7
(New)
(Ch. 342) (AB 1185)
(Effective 1/1/2021)

Authorizes a county to create a sheriff oversight board and/or establish an office of the inspector general, either by action of a county board of supervisors or by a vote of county residents. Provides that the oversight board is to be comprised of civilians appointed by the board of supervisors and that the inspector general is to be appointed by the board of supervisors. Provides that the purpose of the oversight board and the inspector general is to assist the board of supervisors with its duties required pursuant to existing Gov't C. 25303 that relate to the sheriff.

The California Supreme Court in *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, ruled, among other things, that Gov't C. 25303 is not limited to the oversight of fiscal matters and permits a board of supervisors to supervise county officers in order to ensure they faithfully perform their duties.

Authorizes the chair of the oversight board and the inspector general to issue a subpoena for witnesses or records when they deem it necessary or important to examine the following:

1. Any person as a witness upon any subject matter within the jurisdiction of the board;
2. Any officer of the county in relation to the discharge of his or her official duties on behalf of the sheriff's department;
3. Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.

Gov't C. 25303 requires a board of supervisors to "supervise the official conduct of all county officers … and particularly insofar as the functions and duties of such county officers … relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports, and present their books and accounts for inspection." Gov't C. 25303 goes on to provide that it shall **not** "be construed to affect the independent and constitutionally and statutorily designated investigative functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county."

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However, subdivision (d) in new Gov't C. 25303.7 provides that the "exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall **not** be considered to obstruct the investigative functions of the sheriff."

The legislative history of the bill is clear that the goal, at a minimum, is to have an oversight board or inspector general look into cases involving the use of deadly force by sheriff's departments.

Gov't C. 27706
Gov't C. 27707
(Repealed & Added)
Gov't C. 27712
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes references to P.C. 987.8, which is repealed by this bill. (P.C. 987.8, beginning July 1, 2021, will no longer permit a court to impose a lien on real property owned by a defendant or to order a defendant to pay all or a portion of the costs of a public defender or appointed private counsel.)

Gov't C. 27706 continues to set forth public defender duties, including representing criminal defendants who cannot afford to employ counsel, and upon request, representing persons in civil litigation who are being persecuted or unjustly harassed and are financially not able to employ counsel.

Gov't C. 27707 continues to provide that the court may make the final determination as to whether a defendant is financially able to employ counsel.

Gov't C. 27712 is repealed as of July 1, 2021, so that courts will no longer be able to order a defendant to pay all or a portion of public defender or appointed counsel fees. Pursuant to new Gov't C. 6111, which is created by this bill, any debt still owed for attorney fees will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated in the Government Code include public defender/appointed counsel fees, criminal justice administration fees, county booking fees, and city booking fees. Fees eliminated in the Penal Code include public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation

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supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New Gov't C. 6111 cancels all outstanding debts involving defense attorney fees by providing that beginning July 1, 2021, the balance of any court-imposed costs pursuant to Gov't C. 27712 (public defender/appointed counsel fees) is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

Gov't C. 27750
Gov't C. 27752
(Repealed & Added)
Gov't C. 27753
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, amends a reference to attorney's fees in Gov't C. 27750, because criminal defendants will no longer have to pay any public defender or appointed counsel fees as of July 1, 2021. Both Gov't C. 27712 and P.C. 987.8 are repealed by this bill.

Effective July 1, 2021, amends Gov't C. 27752 to delete cross-references to several Penal Code sections that are themselves amended or repealed as of July 1, 2021, so as to eliminate various administrative fees that those sections previously authorized.

Effective July 1, 2021, repeals Gov't C. 27753 in its entirety, so that a court may no longer require a criminal defendant to pay all or a portion of the costs of a public defender or appointed counsel.

These three Government Code sections have to do with county financial evaluation officers. A Board of Supervisors continues to be authorized to designate a county officer to make financial evaluations of defendants and other persons liable for reimbursable costs under the law. Beginning July 1, 2021, a number of costs are no longer reimbursable because

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the court is no longer permitted to order them, so a county financial evaluation officer will not have to address them.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated in the Government Code include public defender/appointed counsel fees, criminal justice administration fees, county booking fees, and city booking fees. Fees eliminated in the Penal Code include public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

Gov't C. 29550
(Repealed & Added)
Gov't C. 29550.1
Gov't C. 29550.2
Gov't C. 29550.3
(Repealed)
Gov't C. 29551
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, amends or repeals these sections in order to eliminate a criminal defendant having to pay a criminal justice administration/booking fee (Gov't C. 29550(c) and 29550.1), an administrative screening fee or a citation processing fee (Gov't C. 29550(f)), a county booking fee (Gov't C. 29550.2), or a city booking fee (Gov't C. 29550.3). Pursuant to new Gov't C. 6111, any debt still owed for these fees on July 1, 2021, will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated in the Government Code include public defender/appointed counsel fees, criminal justice administration fees, county booking fees, and city booking fees. Fees eliminated in the Penal Code include public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9

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jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New Gov't C. 6111 cancels all outstanding debts involving criminal justice administrative fees and booking fees by providing that beginning July 1, 2021, the balance of any court-imposed costs pursuant to Gov't C. 29550(c), 29550(f), 29550.1, 29550.2, and 29550.3 is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

Gov't C. 68115
(Amended)
(Ch. 76) (AB 3366)
(Effective 9/11/2020)

Adds a new subdivision (b) to empower the Chairperson of the Judicial Council (i.e., the Chief Justice of the California Supreme Court) to issue appropriate multicounty or statewide emergency orders set forth in existing subdivision (a), with or without requests from presiding superior court judges and with or without a state-of-emergency declaration by the Governor or the U.S. President. The Chairperson may make appropriate orders when he or she determines that a circumstance warranting relief specified in existing subdivision (a) (e.g., a natural disaster, war, an act of terrorism, epidemic, etc.) threatens the orderly operation of superior court locations in more than one county, or renders presence in, or access to affected facilities unsafe.

The purpose of the bill is to streamline the operation of Gov't C. 68115 when the emergency affects more than one county by permitting the Chairperson to issue orders on his or her own, without having to wait for a request from an individual court. The types of orders that may be made are in existing subdivision (a) and this bill does not change them. Examples of orders specified in subdivision (a) are extending the time period for bringing a case to trial, extending the time for arraigning a criminal defendant or holding a preliminary

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hearing, extending the duration of a temporary restraining order, and transferring civil cases to another county.

Gov't C. 76000.10
(Amended)
(Ch. 52) (AB 2450)
(Effective 9/9/2020)

Extends the sunset date on the assessment of criminal penalties that fund the Emergency Medical Air Transportation and Children's Coverage Fund, by providing that the assessment will terminate on July 1, 2021 instead of on July 1, 2020, and that penalties assessed before July 1, 2021, shall continue to be collected, administered, and distributed until exhausted or until December 31, 2022, whichever occurs first.

Gov't C. 76000.10 prescribes a penalty of four dollars ($4) for every Vehicle Code conviction or a conviction of a local ordinance adopted pursuant to the Vehicle Code, except parking offenses. This penalty funds air ambulances.

Health & Safety Code

H&S 1799.101
(New)
(Ch. 352) (AB 2717)
(Effective 1/1/2021)

Provides immunity from criminal liability for a Good Samaritan civilian who rescues a child age six or younger from a motor vehicle and sets forth procedures for peace officers, firefighters, and emergency responders who engage in such rescues.

Provides that a person who removes a child from a motor vehicle because he or she reasonably believes the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances, is not criminally liable if the person does all of the following:

1. Determines the vehicle is locked or that there is no other reasonable manner for the child to be removed from the vehicle;
2. Has a good faith belief that forcible entry into the vehicle is necessary because the child is in imminent danger of suffering harm if not immediately removed;
3. Has contacted a local law enforcement agency, the fire department, or the "911" emergency service prior to forcibly entering the vehicle;
4. Remains with the child in a safe location, out of the elements but reasonably close to the vehicle, until a peace officer or another emergency responder arrives;
5. Uses no more force to enter the vehicle and remove the child than is necessary under the circumstances; and
6. Immediately turns the child over to a representative from law enforcement or an emergency responder.

New subdivision (b) provides that H&S 1799.101 does not prevent a peace officer, firefighter, or emergency responder from removing a child from a motor vehicle if the child is in immediate danger and permits a first responder to take all steps reasonably necessary to remove a child, including breaking in, after a reasonable effort to locate the vehicle owner. Requires first responders who remove a child from a vehicle or take possession of an already-removed child to arrange for treatment and transportation of the child according to the medical control policies of the local EMS (emergency medical services) agency. Provides that the parent of a child removed from a vehicle may be required to pay for the medical treatment. Requires a first responder to leave written notice on the vehicle with the name and office

continued

of the first responder and the address where the child will be treated.

[This bill also creates Civil Code 43.102 to provide immunity from *civil* liability for a Good Samaritan who rescues a child age six or younger from a motor vehicle in accordance with the provisions of H&S 1799.101. See the Civil Code section of this digest for more information.]

[Existing Vehicle Code 15620 is the infraction crime of leaving a child age six or younger in a motor vehicle without the supervision of a person who is 12 years of age or older, where there is a significant risk to the child's health or safety, or when the vehicle's engine is running or the keys are in the ignition.]

H&S 11364
(Amended)
(Ch. 274) (AB 2077)
(Effective 1/1/2021)

Amends subdivision (c) to extend the sunset date for five years, from January 1, 2021 to January 1, 2026, in order to keep in place this exception to the crime of unlawfully possessing drug paraphernalia: hypodermic needles or syringes possessed solely for personal use.

[This bill also amends B&P 4145.5 to extend the sunset date by five years, from January 1, 2021 to January 1, 2026, in order to continue authorizing both of the following:

1. A physician or pharmacist being permitted to furnish hypodermic needles and syringes, without a prescription, to a person age 18 or older; and
2. a person age 18 or older being permitted to obtain hypodermic needles and syringes, without a prescription, from a physician or pharmacist.]

[This bill also repeals B&P 4142 and B&P 4326. See the Business & Professions Code section of this digest for more information.]

H&S 104559.5
(New)
(Ch. 34) (SB 793)
(Effective 1/1/2021)

Creates new Article 5 in Chapter 1 of Part 3 of Division 103 of the Health & Safety Code entitled "Tobacco Sale Prohibition."

Creates the new infraction crime of a tobacco retailer or a tobacco retailer's employee or agent, selling, offering for sale, or possessing with the intent to sell or offer for sale,

continued

a flavored tobacco product or a tobacco product flavor enhancer (to a person of any age). Punishable by a fine of $250 for each violation.

Establishes a rebuttable presumption that a tobacco product is flavored if a manufacturer or its agent or employee has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the product has a characterizing flavor.

Defines 16 terms, including these:

"Characterizing flavor" is defined as a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, including, but not limited to, tastes or aromas relating to fruit, chocolate, vanilla, honey, candy, alcoholic beverage, mint, etc.

"Flavored tobacco product" is defined as a tobacco product that contains a constituent that imparts a characterizing flavor.

"Hookah" is defined as a type of waterpipe used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water.

"Shisha tobacco product" is defined as a tobacco product smoked or intended to be smoked in a hookah. Provides that the term includes hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh, but *not* electronic devices such as an electronic hookah, electronic cigarette, or electronic tobacco product.

"Tobacco product" means a tobacco product defined in existing H&S 104495(a)(8), which defines the term as any of the following:

(i) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

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(ii) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(iii) Any component, part, or accessory of a tobacco product, whether or not sold separately.

H&S 104495(a)(8) also provides that "tobacco product" does **not** include a nicotine replacement product approved by the U.S. Food & Drug Administration.

Sets forth three exceptions to this new infraction crime:

1. The sale of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises; or
2. Loose leaf tobacco or premium cigars; or
3. The sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:
    a. the hookah tobacco retailer has a valid license to sell tobacco products; and
    b. the hookah tobacco retailer does not permit any person under age 21 to be present or to enter the premises at any time; and
    c. the hookah tobacco retailer operates in accordance with all relevant state and local laws relating to the sale of tobacco products; and
    d. if consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the retailer operates in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer.

Permits localities to adopt greater restrictions on the access to tobacco products than this new section imposes.

The purpose of the bill is to discourage youth from using tobacco. According to the legislative history of the bill, supporters of the bill contend that youth usage of flavored tobacco products has "exploded recently" and that 80% of young people who have ever used tobacco started with a flavored product. Opponents of the bill pointed out that vaping has helped millions of adults quit smoking combustible cigarettes, that the United States federal Food & Drug Administration numbers show that teen smoking has

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dropped 20% over the past two years, and that California will lose tax revenue at a time when its budget is already in bad shape due to COVID-19.

[P.C. 308(a) remains the misdemeanor crime of selling, giving away, or furnishing tobacco, cigarettes, cigarette papers, or blunt wraps to a person under age 21. Despite the misdemeanor label, the crime is punishable by only a fine: $200 for the first offense, $500 for the second offense, and $1,000 for a third offense.]

H&S 122354.5
(Repealed & Added)
(Ch. 96) (AB 2152)
(Effective 1/1/2021)

Prohibits a pet store from adopting out, selling, or offering for sale, a dog, cat, or rabbit. 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.

Previously, this section prohibited a pet store from selling a dog, cat, or rabbit unless the animal was obtained from a public animal control agency or shelter, a society for the prevention of cruelty to animals shelter, a humane society shelter, or a rescue group. The purpose of the law was to prevent pet stores from obtaining animals from mills (referred to as "puppy mills" or "kitten mills") where commercial, high-volume breeding facilities mass produce animals in often squalid and inhumane conditions. Now a pet store is prohibited from adopting out or selling a dog, cat, or rabbit, regardless of where it is obtained.

Prohibits a pet store from receiving any fees in connection with dogs, cats, or rabbits that are displayed for adoption by a public animal control agency or shelter, or by an animal rescue group. Requires that displayed animals be sterilized and limits total adoption fees to no more than $500.

Provides that any violation of this section will result in a written notice to the pet store and to the group responsible for the animal. Requires that the written notice detail the violation, include a direction to cease the specific activity, and state the time period within which the violation must be corrected. Failure to correct the violation within the time period specified is punishable by a civil penalty of $1,000 for a first violation, $2,500 for a second violation, and $5,000 for subsequent violations. Provides that each animal displayed, adopted, sold, or offered for sale or adoption in violation of this section constitutes a separate violation.

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Authorizes a district attorney or city attorney to bring an action for a violation. Provides that in addition to any other remedy, a district attorney is authorized to apply to the court for, and the court has jurisdiction to grant, a temporary or permanent injunction enjoining or restraining any person or entity from violating any provision of this section.

According to the legislative history, the bill was sponsored by the San Diego Humane Society which said that investigations revealed that some pet stores got around the law by setting up fake nonprofit groups that continued to obtain animals from puppy mills (often located out of state) and supply them to pet stores. The purpose of completely prohibiting a pet store from adopting out or selling a dog, cat, or rabbit is to shut down the mill-to-store pipeline.

Juveniles

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

Education C. 48263
Education C. 48267
Education C. 48268
Education C. 48269
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Makes several amendments to these truancy and school behavior statutes to eliminate a school being required to report a student to the juvenile court for being "habitually insubordinate or disorderly during attendance at school" and to eliminate the authority of a county superintendent of schools to petition the juvenile court about a truant minor.

Amends Education C. 48263 to eliminate the authority of a county superintendent of schools to petition the juvenile court about a truant minor. (Subdivision (b)(2) had provided that in a county that does **not** have a truancy mediation program, the school attendance review board or probation officer may direct the county superintendent to petition the juvenile court when a truant pupil has failed to respond to the directives of the school attendance review board or the probation officer.) These provisions are now deleted.

Education C. 48263 continues to provide that if a minor is a habitual truant or chronic absentee, or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to an attendance review board or to the probation department. It also continues to provide that if a school attendance review board or probation officer determines that available community services cannot resolve the truancy or insubordination problem, the district attorney may be notified.

Amends Education C. 48267, 48268, and 48269 to delete references to a pupil who is habitually insubordinate or disorderly during attendance at school, because this is no longer a basis for the juvenile court to have jurisdiction over a minor pursuant to W&I 601. This bill amends W&I 601 to delete the following as a basis for juvenile court jurisdiction: a minor's "persistent or habitual refusal to obey the reasonable and proper directions of school authorities." Education C. 48267 is amended to delete a reference to pupils adjudged as habitually insubordinate or disorderly by the juvenile court. Section 48267 continues to require that a student who has been found to be a ward of the court pursuant to W&I 602 and is required as a condition of probation to attend school and is reported as truant, or

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as tardy without a valid excuse, must be brought to the attention of the juvenile court and the student's probation or parole officer, within 10 days of the violation.

This bill amends W&I 601 to delete the refusal to obey school authorities as a basis for juvenile court jurisdiction, but continues to provide that these circumstances *are* within the jurisdiction of the juvenile court:

1. Four or more truancies within one school year; or
2. A school attendance review board or probation officer determines that available public and private services are not sufficient or not appropriate to correct the habitual truancy of the minor; or
3. The minor fails to respond to directives of a school attendance review board or probation officer or to services provided.

W&I 601 is also amended to remove the authority of a school administrator to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to W&I 601.

Uncodified Section One of this bill sets forth a number of declarations by the Legislature, including these:

1. It is the intent of the Legislature that cities and counties work closely with youth, parents, local educational agencies, community partners, and system officials "to serve and protect youth only as needed, avoiding any contact with the juvenile justice system."
2. It is the intent of the Legislature that truancy and other status offenses "be diverted from citation, arrest, and court."
3. "Youth of color are disproportionately referred to probation."

[This bill also amends W&I 236, 601, 601.3, 653.5, and 654, and adds new W&I 651.5. See below.]

P.C. 745
(New)
(Ch. 317) (AB 2542)
(Section 3.5)
(Effective 1/1/2021)

The California Racial Justice Act of 2020.

Prohibits the state from seeking or obtaining a criminal conviction, or seeking, obtaining, or imposing a sentence, on the basis of race, ethnicity, or national origin.

continued

Provides that a defendant may establish a violation by a preponderance of the evidence, in one of several ways:

1. A judge, attorney, witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.

2. During the trial, a judge, attorney, witness, or juror used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of race, ethnicity, or national origin, **whether or not purposeful**.

3. The defendant was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

4. (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

   (B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

Subdivision (f) provides that P.C. 745 applies to adjudications and dispositions in juvenile court, as well as to cases in criminal courts.

continued

Subdivision (j) provides that P.C. 745 "applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021." Stated another way, P.C. 745 is *not* retroactive and applies only to cases in which judgment is entered on and after January 1, 2021.

See the Penal Code section of this digest for more information.

P.C. 13015
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Requires DOJ, by January 1, 2023, to submit a plan for the replacement of the Juvenile Court and Probation Statistical System (JCPSS) with a modern database and reporting system, in order to improve and modernize juvenile justice data collection and reporting. Requires DOJ to convene a working group of key stakeholders and experts, including those with expertise in juvenile justice data. Sets forth numerous items the plan must address.

W&I 207.1
W&I 207.2
(Amended)
W&I 207.6
(Repealed)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Amends W&I 207.1 to eliminate provisions (all of subdivision (b)) that had permitted a minor charged with a W&I 707(b) offense and whose case was transferred to a court of criminal jurisdiction (adult court), to be housed in an adult jail or lockup if specified conditions were met, including a finding that detention in a juvenile hall would endanger public safety or be detrimental to other minors in juvenile hall, and a requirement that contact between the minor and adult inmates be restricted. This kind of housing was permitted long-term, such as while a minor was pending trial. Subdivision (b) is eliminated in its entirety.

Retains detailed provisions permitting a minor who is arrested to be held *temporarily* in a law enforcement facility that contains a lockup for adults, if a number of conditions are met, including that the minor is held for no more than six hours and that the holding of the minor is for the purpose of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging transfer of the minor to a juvenile facility.

Amends W&I 207.2 to update a cross-reference to a particular subdivision in W&I 207.1.

Completely repeals W&I 207.6, which had cross-referenced W&I 207.1(b) and had required the court to make particular findings on the record in order for a minor to be held long-term in an adult jail.

W&I 208.5
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Repeals W&I 208.5, which had provided that a minor detained in or committed to a juvenile facility who reaches the age of 19 years could be transferred to an adult facility.

Adds an entirely new version of W&I 208.5 to permit any juvenile offender whose case originated in juvenile court to be held in a county juvenile facility until age 25, unless either (1) the probation department petitions the court to house an offender who is age 19 or older in an adult facility; or (2) the offender is committed to the CDCR, Division of Juvenile Facilities because he or she committed a W&I 707(b) offense or an offense specified in P.C. 290.008(c). Thus, even a juvenile offender whose case was transferred from juvenile court to adult court is eligible to serve his or her sentence in a juvenile facility.

Requires that the court hold a hearing if a probation department files a petition to house an offender in an adult facility. Provides that there is a rebuttable presumption that the offender will be retained in a juvenile facility. Requires the court to make written findings and to consider these factors:

1. The impact of being held in an adult facility on the physical and mental health and well-being of the offender.

2. The benefits of continued programming at the juvenile facility.

3. The capacity of the adult facility to separate younger and older inmates and to provide them with safe and age-appropriate housing and program opportunities.

4. The capacity of the juvenile facility to provide needed separation of older from younger inmates given the youth currently housed in the facility.

5. Evidence demonstrating that the juvenile facility is not able to currently manage the offender's needs without posing a significant danger to staff or other youth in the facility.

Provides that if an offender is removed from a juvenile facility, the court must hold another hearing upon the motion of any party, if changed circumstances are shown, and consider the same factors listed above.

W&I 223.2
(New)
(Ch. 340) (SB 1290)
(Effective 1/1/2021)

Eliminates the unpaid balance on county-assessed or court-ordered costs that were imposed before January 1, 2018, pursuant to a number of Welfare & Institutions Code sections and Penal Code sections. The purpose of the bill is to eliminate debt for the parents or guardians of juvenile wards in specified circumstances, for juveniles who were ordered to participate in substance abuse testing, and for adults who were 21 years of age or younger when participating in electronic home detention, substance abuse testing, or work furlough. Existing law, since January 1, 2018, no longer requires minors and young adults to pay for these fees and costs. This bill wipes out any pre-2018 debt.

Eliminates the outstanding balance of specified county-assessed or court-ordered costs imposed before January 1, 2018 on the parent or guardian of a minor, if the minor was adjudged a ward of the juvenile court, or was on probation pursuant to W&I 725 without being adjudged a ward, or was the subject of a petition filed to adjudge the minor a ward of the court, or was on informal supervision pursuant to W&I 654.

Applies to these Welfare & Institutions Code provisions:

1. W&I 207.2 (the cost of transporting a minor after temporary custody or the cost of food and care while in temporary custody).

2. W&I 903 (the cost of the support of a minor while detained in a juvenile facility).

3. W&I 903.1 (the cost of legal services rendered to a minor by an attorney).

4. Former W&I 903.15 (a registration fee of up to $50 for appointed legal counsel).

5. W&I 903.2 (the cost of home supervision of a minor).

6. W&I 903.25 (the cost of food, shelter, and care of a minor who remains in the custody of a probation department or facility, after a parent or guardian receives notice to pick up the minor).

7. W&I 903.4 (the cost of the support of a minor in out-of-home placement).

continued

8. W&I 903.5 (the cost of the care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid such as AFDC or SSI).

Eliminates the outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, on a minor who was ordered to undergo substance abuse testing pursuant to W&I 729.9.

Eliminates the outstanding balance of specified county-assessed or court-ordered costs imposed before January 1, 2018 on an adult who was age 21 or younger at the time and who was prosecuted in criminal (adult) court.

Applies to these Penal Code provisions:

1. P.C. 1203.016 (electronic home detention program after sentencing).
2. P.C. 1203.1ab (substance abuse testing as a condition of probation).
3. P.C. 1208.2 (the cost of county parole, or work furlough, or 1203.016 electronic home detention for sentenced inmates, or 1203.018 electronic monitoring in lieu of bail).

W&I 236
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Amends W&1 236, which permits probation departments to engage in activities designed to prevent juvenile delinquency and to provide services to any juveniles in the community, to add that services and programs offered to minors who are *not* on probation are voluntary, and shall not include consequences as a result of not engaging in or completing those programs or services. Also provides that for minors not on probation, the provision of services or programs shall not be construed to allow probation departments to maintain a formal or informal caseload, to establish formal or informal contracts with minors or their parents, or to create "mandated-probation conditions."

[The legislative history of the bill claims that youth who have not engaged in any criminal behavior, but who have behavior and attendance problems at school, are referred to a probation department for voluntary programs, but feel coerced into participating. The legislative history also claims that youth who are subject to voluntary programs are then "criminalized" by requiring them to check in with a probation officer, and subjecting them to random searches, surprise home visits, and interrogations.]

W&I 601
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Removes the authority of a school administrator to issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.

Removes a minor's persistent or habitual refusal to obey the reasonable and proper directions of school authorities from the list of grounds that bring a minor within the jurisdiction of the juvenile court.

Continues to provide that these minors **are** within the jurisdiction of the juvenile court: minors between the ages of 12 and 17 who are beyond the control of a parent or guardian, or who violate city or county curfews, or who persistently refuse to obey a parent's reasonable and proper directions, or who have four or more truancies within one school year, or who fail to respond to the directives of a school attendance review board or probation officer, or for whom a school attendance review board or probation officer determines that the available public and private services are insufficient to correct the habitual truancy of the minor.

Continues to permit a peace officer to issue a notice to appear to a minor for the above reasons, but adds that before issuing the notice to appear, a peace officer must refer the minor to a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services.

[This bill also amends Education C. 48263, 48267, 48268, and 48269, pertaining to truancy and school behavior. See above, or see the Education Code section of this digest.]

W&I 601.3
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Amends subdivision (f) of this section, which authorizes a district attorney or probation department to establish a truancy mediation program. Instead of requiring a district attorney and probation department to decide which of the two offices is best able to operate a truancy mediation program, the amendment now requires a district attorney and probation department to determine whether another public agency, or a community-based organization, or the district attorney, or the probation department, is best able to operate the program.

The definition of "community-based organization" is provided in new W&I 651.5. See below.

W&I 607
(Amended)
(Ch. 337) (SB 823)
(Effective 7/1/2021)

Lowers the age, from 25 to 23, at which the juvenile court loses jurisdiction over an offender who was found to have committed a W&I 707(b) offense, unless the offender would have faced an aggregate sentence of seven years or more in adult court. Previously, a juvenile court was permitted to retain jurisdiction over a W&I 707(b) offender until age 25 if the offender was committed to CDCR, Division of Juvenile Facilities. Now the maximum age is 23 and there is no requirement that the W&I 707(b) offender have been committed to the Division of Juvenile Facilities. The exception to the age 23 maximum is when the offender's sentence in adult court could have been seven years or more.

Continues to provide that in other cases, the juvenile court may retain jurisdiction over a ward or dependent child of the court until age 21.

Continues to provide that the court shall not discharge an offender from its jurisdiction while the offender remains under the jurisdiction of CDCR, Division of Juvenile Justice, including extended periods of control ordered pursuant to W&I 1800.

W&I 625.6
(Amended)
(Ch. 335) (SB 203)
(Effective 1/1/2021)

Expands the prohibition on the custodial interrogation of a minor without the minor first consulting with legal counsel, by raising the age of the minor from 15 years of age or younger, to 17 years of age or younger. Thus, this section now applies to *all* minors, and no minor may undergo custodial interrogation or waive *Miranda* rights without first consulting with legal counsel in person, by telephone, or by video conference. Continues to provide that the consultation cannot be waived.

Expands what the court must consider in deciding whether a juvenile's statements made during or after a custodial interrogation should be admitted. Previously, the court was required to consider the effect of the failure to comply with the legal consultation requirement. Now, the court must also consider "any willful violation of [the consultation requirement] in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code." (Section 780 sets forth a number of considerations when evaluating witness credibility.)

Continues to provide for the same exceptions to the legal consultation requirement:

continued

1. Situations in which the officer who questions a youth reasonably believes the information sought is necessary to protect life or property from an imminent threat, and the questions are limited to those reasonably necessary to obtain that information.

2. Probation officers are exempt from the legal consultation requirement in the "normal performance" of their duties pursuant to W&I 625, 627.5, or 628.

(W&I 625 and W&I 627.5 require an officer or probation officer taking a minor into custody to advise the minor of his or her constitutional rights, including the right to remain silent, the right to have counsel present during questioning, and the right to have counsel appointed if unable to afford counsel. W&I 628 requires a probation officer to immediately investigate the circumstances of a minor who is taken into temporary custody and the facts surrounding his or her being taken into custody.)

Of course, any minor who is **not** in custody may be questioned without a legal consultation being held first.

Eliminates the sunset date of January 1, 2025, to make W&I 625.6 permanent.

Repeals subdivision (e), before the requirements in it could be accomplished. Subdivision (e) had required the Governor to convene a panel of experts, including law enforcement and judges, to review the implementation of W&I 625.6 and to examine its effects and outcomes, including the appropriate age of youth to whom this section should apply. The panel was to be convened by January 1, 2023, and a report was due to the Legislature by April 1, 2024. Instead of doing the study and examining the data and the information such a study would produce, the Legislature expanded the consultation requirement to all minors and made it permanent.

W&I 651.5
(New)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Provides that the definition of "community-based organization" means a public or private nonprofit organization of demonstrated effectiveness that is representative of a community or significant segments of a community, and provides educational, physical, mental

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health, recreational, arts, and other youth development or related services to individuals in the community.

This new section provides that this definition applies "for purposes of this article," which covers W&I 650–664 (Article 16 of Chapter 2 of Part 1 of Division 2 of the Welfare & Institutions Code entitled "Wards—Commencement of Proceedings.") The reference to "this article" is probably a drafting error. The term "community-based organization" is also used in amended W&I 601.3 (see above) and probably also applies there as well. W&I 601.3 is in Article 14 (not 16) of Chapter 2 of Part 1 of Division 2.

W&I 653.5
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Adds that when a minor is referred to a probation department to commence proceedings in juvenile court and a probation officer makes the investigation already required by this section to determine whether juvenile court proceedings should commence or what services should be provided, the probation officer shall refer the minor to services provided by a health agency, a community-based organization, a local educational agency, an appropriate non-law enforcement agency, or the probation department. Previously, this provision was more general, requiring a probation officer to make a referral to appropriate services.

A definition of "community-based organization" is provided in new W&I 651.5. See above.

Eliminates the following from the list of circumstances that require a probation officer to take an affidavit to the district attorney within 48 hours of receiving a referral about a minor: when the minor has previously been placed in a program of informal supervision pursuant to W&I 654. Continues to require the affidavit to be delivered within 48 hours to the prosecutor in all other specified circumstances, such as when the minor has been referred for the commission of a W&I 707(b) offense, or is age 14 and referred for a felony crime, or is referred for a gang crime, or is referred for an offense in which the restitution amount owed to the victim exceeds $1,000.

W&I 654
(Amended)
(Ch. 323) (AB 901)
(Effective 1/1/2021)

Adds that when a probation officer decides not to file a petition to declare a minor a ward of the court and opts instead for up to six months of informal supervision, the probation officer is to refer the minor to services by a health agency, a community-based organization, a local educational agency, an appropriate non-law enforcement agency, or the probation department. Previously this provision was more general, requiring a probation officer to a delineate a specific program of supervision for up to six months in lieu of filing a petition. The definition of "community-based organization" is in new W&I 651.5. See above.

Changes "shall immediately" to "may," in order to provide that if a probation officer determines the minor has not participated in the program of informal supervision, the probation officer *may,* but is not required, to file a petition or request that a petition be filed by the prosecuting attorney.

Eliminates provisions that authorized requiring a minor's parents to make full or partial reimbursement for services provided to the minor's family.

Expands the description of the counseling and education centers a minor may be referred to by adding counseling and mental health resources, education support, the arts, recreation, and youth development services.

W&I 707.1
(Amended)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Deletes subdivision (b), which had to do with a juvenile court's authority to order a minor delivered to the custody of a sheriff if the minor was charged with a W&I 707(b) offense and was transferred to adult court for prosecution. Subdivision (b) had also provided that any offender in juvenile hall who reached 18 years of age must be delivered to the sheriff to be held in an adult jail unless the court found that it was in the best interest of the offender and the public to keep the offender in a juvenile facility.

See the new version of W&I 208.5, above, for provisions on where youthful offenders may be held.

Continues to provide that if a minor's case is transferred to a court of criminal jurisdiction (adult court), the district attorney may file an accusatory pleading, and the minor is entitled to release on bail or on his or her own recognizance under the same circumstances and conditions as an adult charged with the same offense.

W&I 730
(Amended)
(Ch. 337) (SB 823)
(Effective 7/1/2021)

Reduces the maximum length of commitment that a court can impose upon a minor who is adjudged a ward of the court **from** a period that cannot exceed the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense **to** a period that cannot exceed "the middle term of imprisonment" that could be imposed upon an adult convicted of the same offense.

[There is no provision explaining how the middle term of imprisonment rule would apply in a multi-count case.]

Adds several orders the court may make when a minor is adjudged a ward of the juvenile court:

1. "Order the ward to make restitution." (Restitution is already required to be ordered pursuant to W&I 730.6.)
2. Order the ward to pay a fine of up to $250 to the county treasury if the court finds the minor has the financial ability to pay the fine.
3. Order the ward to participate in uncompensated work programs.
4. Commit the ward to a sheltered-care facility.
5. "Order the ward and the ward's family or guardian to participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward."

[These additional orders the court may make are already in existing W&I 731.]

W&I 731
(Amended)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Reduces the maximum length of commitment that a court can impose upon a minor who is committed to the Division of Juvenile Justice **from** a period that cannot exceed the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense **to** a period that cannot exceed "the middle term of imprisonment" that could be imposed upon an adult convicted of the same offense. [There is no provision explaining how the middle term of imprisonment rule would apply in a multi-count case.]

Provides that W&I 731 will become inoperative on July 1, 2021, which is when amended W&I 730 becomes effective. See W&I 730, above.

W&I 733.1
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Prohibits a ward of the juvenile court from being committed to the CDCR Division of Juvenile Justice, on or after July 1, 2021, except as authorized pursuant to W&I 736.5(c). Pursuant to W&I 736.5(c), a court may commit a ward to the Division of Juvenile Justice (DJJ) pending final closure of DJJ, if the ward "is eligible to be committed under existing law and in whose case a motion to transfer the minor from juvenile court to a court of criminal jurisdiction (adult court) was filed."

Provides that effective July 1, 2021, a person adjudged a ward of the court shall not be committed to DJJ as long as funding allocations to counties required by new W&I 1991 are authorized in statute and disbursed by September 1, 2021, and by every September 1st thereafter. If allocations are not authorized and disbursed, offenders adjudged wards of the court for a W&I 707(b) offense or an offense described in P.C. 290.008(c) may be committed to a "state-funded facility" pursuant to W&I 731, 733, and 734. (New W&I 1991 provides funding for counties to rehabilitate and supervise offenders at the local level who otherwise would have been sent to DJJ.)

[New W&I 736.5 provides that it is the intent of the Legislature to close DJJ by shifting responsibility for all youth adjudged a ward of the court, beginning July 1, 2021, to county governments, and providing annual funding for counties to fulfill this new responsibility. See W&I 736.5, below, for more information.]

W&I 736.5
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Provides that it is the intent of the Legislature to close the Division of Juvenile Justice (DJJ) by shifting responsibility for all youth adjudged a ward of the court, beginning July 1, 2021, to county governments, and providing annual funding for counties to fulfill this new responsibility.

Provides that beginning July 1, 2021, a ward shall not be committed to DJJ, except as described in subdivision (c). W&I 736.5(c) provides that pending final closure of DJJ, a court may commit a ward to DJJ who "is eligible to be committed under existing law and in whose case a motion to transfer the minor from juvenile court to a court of criminal jurisdiction (adult court) was filed." It appears that a DJJ commitment could happen after July 1, 2021, as long as DJJ is

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not yet closed and a motion to transfer the case to adult court is filed.

Subdivision (d) provides that all wards committed to DJJ before July 1, 2021, or pursuant to W&I 736.5(c), shall remain in its custody until the ward is discharged, released, or otherwise moved pursuant to law.

Subdivision (e) provides that it is the Legislature's intent to establish, by March 1, 2021, a separate dispositional track for higher-need youth.

W&I 781
(Amended)
(Ch. 329) (AB 2321)
(Effective 1/1/2021)

Expands access to sealed juvenile W&I 707(b) records by permitting access by a judge or prosecutor for the purpose of certifying victim helpfulness on forms that are required when a victim who is not a citizen is seeking a U-Visa (P.C. 679.10) or a T-Visa (P.C. 679.11) in order to stay in the United States. Limits access to those records that pertain to a qualifying offense for a U-Visa or T-Visa (the list of crimes in P.C. 679.10(c) that includes sexual assault, human trafficking, domestic violence, torture, and perjury). Prohibits the obtained information from being used to impose penalties, detention, or other sanctions.

Continues to permit access to a sealed juvenile W&I 707(b) record for several other reasons, including by a prosecutor in order to comply with the *Brady* obligation to disclose favorable or exculpatory evidence to a defendant.

W&I 786
(Amended)
(Ch. 329) (AB 2321)
(Effective 1/1/2021)

and

(Ch. 338) (SB 1126)
(Effective 1/1/2021)

AB 2321 expands access to juvenile records sealed pursuant to W&I 786 by permitting access by a judge or prosecutor for the purpose of certifying victim helpfulness on forms that are required when a victim who is not a citizen is seeking a U-Visa (P.C. 679.10) or a T-Visa (P.C. 679.11) in order to stay in the United States. Limits access to those records that pertain to a qualifying offense for a U-Visa or T-Visa (the list of crimes in P.C. 679.10(c) that includes sexual assault, human trafficking, domestic violence, torture, and perjury). Prohibits the obtained information from being used to impose penalties, detention, or other sanctions.

SB 1126 expands access to juvenile records sealed pursuant to W&I 786 by permitting access by a judge, prosecutor, probation department, or counsel for the minor, for

continued

the purpose of assessing the minor's competency if a new petition is filed against the minor and the issue of competency is raised. Limits access and use of sealed records to prior competency evaluations submitted to the court, reports concerning remediation efforts and success, and court findings and orders related to the minor's competency, including school records and other test results. Prohibits the obtained information from being used to impose penalties, detention, or other sanctions.

[W&I 786 permits the sealing of juvenile records in cases where informal supervision or probation has been satisfactorily completed.]

W&I 786.5
(Amended)
(Ch. 330) (AB 2425)
(Effective 1/1/2021)

Expands the duties of a probation department regarding the sealing of juvenile records when a minor has satisfactorily completed a program of diversion or informal supervision, to require that a probation department notify the arresting law enforcement agency to seal the arrest records. Requires the law enforcement agency to seal the arrest records within 60 days of being notified and to notify the probation department when sealing has been accomplished. Requires the probation department, within 30 days of being notified that law enforcement agency records have been sealed, to notify the minor in writing that the record has been sealed. Provides that if records have not been sealed (presumably because the minor did not satisfactorily complete the diversion program or informal supervision), the written notice from the probation department shall inform the minor that he or she may petition the court directly to seal records. Continues to require the probation department to notify the minor in writing of the reason records were not sealed.

Adds that any record sealed pursuant to W&I 786.5 may be accessed, inspected, or utilized by a prosecutor in order to meet *Brady* obligations to disclose favorable or exculpatory evidence to a defendant in a criminal case. Requires the prosecutor to destroy these records once the case in which they were used is no longer subject to review on appeal.

Continues to provide that upon the sealing of records pursuant to W&I 786.5, the arrest or offense "shall be deemed not to have occurred" and the minor may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

continued

Continues to require a probation department to seal its own records pursuant to this section if a minor satisfactorily completes a diversion program or informal supervision.

Continues to require a probation department to make a determination of whether the minor satisfactorily or unsatisfactorily completed a diversion program or informal supervision, within 60 days of completion of the program, or, if the program is not completed, within 60 days of determining that the program was not completed by the minor. Also continues to require a probation department to notify a public or private agency operating a diversion program to which a minor was referred, to seal its records if the minor satisfactorily completed the program. Adds a new requirement that the program notify the probation department that the diversion records have been sealed.

Continues to permit a probation department to access a sealed record for the sole purpose of complying with W&I 654.3(e) (i.e., to determine whether the minor previously participated in a program of informal supervision pursuant to W&I 654.)

[This bill also adds new W&I 827.95 to limit a law enforcement agency's release of a copy of a juvenile police record. See below.]

W&I 827
(Amended)
W&I 827.95
(New)
W&I 828
(Amended)
(Ch. 330) (AB 2425)
(Effective 1/1/2021)

New W&I 827.95 provides that notwithstanding existing W&I 827.9, a law enforcement agency shall not release a copy of a juvenile police record under specified circumstances.

(Existing W&I 827.9 applies **only** to Los Angeles County and **permits** the release of a juvenile police record to other law enforcement agencies, district attorneys, child protective agencies, the minor himself or herself, the Dep't of Motor Vehicles, the parents or guardian of the minor who is the subject of the police record, etc.)

New W&I 827.95 also sets forth procedures for the sealing of arrest records.

New W&I 827.95 prohibits a law enforcement agency from releasing a copy of a juvenile police record if the subject of the record is any of the following:

continued

1. A minor who has been diverted by police officers from arrest, citation, detention, or referral to the probation department or the district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program.

2. A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to the probation department or the district attorney, and for whom no referral to the probation department has been made within 60 days of release.

3. A minor who does not fall within the jurisdiction of the juvenile delinquency court under current state law. (e.g., a minor under age 12 who has committed an offense *other than* those offenses listed in W&I 602(b)—murder and specified forcible sexual assault crimes.)

Requires a law enforcement agency (LEA) to release a copy of the juvenile police record to the minor who is the subject of the record or to the minor's parent or guardian, if identifying information pertaining to any other juvenile is removed.

Sets forth detailed sealing procedures for juvenile police records:

1. Provides that where a minor is in a program after being diverted by an LEA (see #1, above), the juvenile police record is considered confidential and "deemed not to exist" except to the LEA, the diversion service provider, the minor, and the minor's parent or guardian. Requires the diversion service provider to notify the LEA within 30 days of the minor's satisfactory completion of the program. Requires the LEA to seal the juvenile police record no later than 30 days from the date the diversion program notifies the LEA about the minor's satisfactory completion. Requires the LEA to notify the diversion program to seal its own records.

2. Provides that where a minor was counseled and released following a law enforcement contact (see #2, above), the record must be sealed no later than 60 days from the date of verification that the minor has *not* been referred to the probation department or the district attorney. Requires that verification must be completed within six months of the decision to counsel and release the minor.

continued

3. Provides that where a minor does not fall within the jurisdiction of the juvenile delinquency court (see #3, above), the record must be sealed immediately upon verification that the minor does not fall within the court's jurisdiction.

Provides that upon the sealing of a juvenile police record, the offense "shall be deemed to not have occurred" and the minor may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought. Provides that if the minor is a dependent of the juvenile court, the LEA must notify the minor's social worker about the record sealing and instruct the social worker to seal his or her own records regarding the LEA contact. Requires the LEA to notify the minor that his or her record has been sealed or that it is not eligible for sealing.

Permits a minor who receives notice from an LEA that the record is not eligible for sealing, to request reconsideration by submitting a petition to the LEA and any documentation supporting the sealing. Provides that a sworn statement from the minor shall qualify as supporting documentation.

Provides that police records sealed pursuant to new W&I 827.95 shall not be considered part of the "juvenile case file" as defined in W&I 827(e). [W&I 827 specifies who may inspect a juvenile court case file.]

Provides that any record sealed pursuant to new W&I 827.95 may be accessed, inspected, or utilized by a prosecutor in order to meet *Brady* obligations to disclose favorable or exculpatory evidence to a defendant in a criminal case. Requires the prosecutor to destroy these records once the case in which they were used is no longer subject to review on appeal.

Requires the Judicial Council, on or before January 1, 2022, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS) to develop forms to implement this new section, including a "Petition to Seal Report of Law Enforcement Agency."

[This bill also amends W&I 786.5 to require a probation department to notify a law enforcement agency to seal its arrest records when a minor satisfactorily completes a diversion program or informal supervision. See W&I 786.5,

continued

above. The bill also amends W&I 827 to add cross-references to W&I 786.5 and new W&I 827.95, and amends W&I 828 to add a cross-reference to new W&I 827.95.]

W&I 912
(Amended)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Provides that on and after July 1, 2021, a county that commits a person to the CDCR, Division of Juvenile Justice, must pay the state an annual rate of $125,000 for the time the offender remains in an institution, boarding home, foster home, or other place where the offender is cared for and supported by DJJ. Provides that this rate does not apply when the offender is 23 years of age or older.

Continues to provide that the annual rate a county must pay for a person committed to DJJ before July 1, 2021 is $24,000 and that the rate does not apply to a person age 23 or older.

W&I 1703
W&I 1710
W&I 1711
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Eliminates references to the Dep't of Youth and Community Restoration (DYCR), which, beginning July 1, 2020, was supposed to be vested with the powers, responsibilities, and jurisdiction of the Division of Juvenile Justice. An executive order delayed the deadline for transferring the Division of the Juvenile Justice to DYCR and then this bill repealed Gov't C. 12820–12836, which created the DYCR in 2019.

W&I 1712
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Provides that all powers, duties, and functions pertaining to the care and treatment of juvenile wards provided by any provision of law and not specifically and expressly assigned to the Juvenile Justice branch of CDCR, or to the Board of Parole Hearings, shall be exercised and performed by the CDCR Secretary.

W&I 1714
W&I 1731.5
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Eliminates references to the Dep't of Youth and Community Restoration (DYCR), which, beginning July 1, 2020, was supposed to be vested with the powers, responsibilities, and jurisdiction of the Division of Juvenile Justice. An executive order delayed the deadline for transferring the Division of the Juvenile Justice to DYCR and then this bill repealed Gov't C. 12820–12836, which created the DYCR in 2019.

W&I 1731.7
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Effective July 1, 2020, suspends this pilot program, which had diverted young adult state prisoners to the Division of Juvenile Justice (DJJ) so that they would be housed in a juvenile facility with the goal of providing developmentally appropriate rehabilitative programming. Provides that any program participants who were diverted before January 1, 2020, may remain at DJJ.

W&I 1752.2
W&I 1762
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Eliminates references to the Dep't of Youth and Community Restoration (DYCR), which, beginning July 1, 2020, was supposed to be vested with the powers, responsibilities, and jurisdiction of the Division of Juvenile Justice. An executive order delayed the deadline for transferring the Division of the Juvenile Justice to DYCR and then this bill repealed Gov't C. 12820–12836, which created the DYCR in 2019.

W&I 1955.2
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Provides that when an offender under age 18 is convicted of an offense in superior court on or after July 1, 2021, and is sentenced to state prison (e.g., a minor whose case was transferred from juvenile court to adult court), the offender shall remain in a county juvenile facility until reaching age 18 and then be transferred to state prison. Requires CDCR to pay a daily rate of $614.44 to a county for each day a qualifying offender is in a local juvenile facility. Provides that this section "only applies once an individual has been convicted and is under 18 years of age." Thus, it appears that the daily rate should be paid to the county for the time between conviction and sentencing, and after sentencing, if the offender is sentenced to state prison.

W&I 1990
W&I 1991
W&I 1995
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Adds new Chapter 1.7 to Division 2.5 of the Welfare & Institutions Code entitled "Juvenile Justice Realignment Block Grant."

Establishes a Juvenile Justice Realignment Block Grant program for the purpose of providing county-based custody, care, and supervision of youth who are "realigned" from the Division of Juvenile Justice or who were eligible for commitment to DJJ prior to its closure.

[New W&I 736.5 (see above) provides that it is the intent of the Legislature to close the Division of Juvenile Justice (DJJ) by shifting responsibility for all youth adjudged a ward of

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the court, beginning July 1, 2021, to county governments, and providing annual funding for counties to fulfill this new responsibility.]

Provides that the target population for the grant program is youth who were eligible for commitment to DJJ prior to its closure, and youth who are adjudicated as wards of the juvenile court based on a W&I 707(b) offense or an offense described in P.C. 290.008.

New W&I 1991 sets forth the funding for counties for the next several years. For the 2021–2022 fiscal year, a total of $39,949,000 will be appropriated from the General Fund to provide rehabilitative and supervision services. Provides a formula for how much each county would receive. For succeeding fiscal years, the appropriation will be $118,339,000 for 2022–2023; $192,037,000 for 2023–2024; and $208,800,000 for 2024–2025 and each year thereafter. Provides that a local public agency that has "primary responsibility for prosecuting or making arrests or detentions" shall not provide rehabilitative and supervision services or receive any funding. (Thus police agencies and district attorney offices would not be eligible for funding but probation departments would.)

New W&I 1995 requires a county to create a subcommittee of the multiagency juvenile justice coordinating council to develop a plan describing the facilities, programs, placements, services, supervision, and re-entry strategies needed to provide appropriate rehabilitation and supervision services for DJJ returnees, and for offenders adjudicated wards of the juvenile court for W&I 707(b) offenses and offenses listed in P.C. 290.008. Requires the subcommittee to be composed of the chief probation officer as chair and one representative each from the district attorney's office, the public defender's office, the department of social services, the department of mental health, the county office of education or a school district, a representative from the court, plus three community members who have experience providing community-based youth services or who are youth justice advocates with expertise and knowledge of the juvenile justice system or who have been directly involved in the juvenile justice system. Sets forth numerous items that the county plan must contain. Requires the plan to be filed by January 1, 2022, in order to receive funding for the 2022–2023 fiscal year.

W&I 2200
W&I 2201
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Adds new Chapter 4 to Division 2.5 of the Welfare & Institutions Code entitled "Office of Youth and Community Restoration."

Beginning July 1, 2021, creates the Office of Youth and Community Restoration in the California Health and Human Services Agency. Provides that the mission of OYCR is to promote trauma responsive, culturally informed services for youth involved in the juvenile justice system that support successful transition into adulthood and help youth become responsible, thriving, and engaged members of their communities. Sets forth a number of responsibilities for OYCR, including evaluating the efficacy of local programs for "realigned" youth, i.e., youth who would have been eligible for commitment to the Division of Juvenile Justice but are now being supervised locally.

W&I 2250
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Adds new Chapter 5 to Division 2.5 of the Welfare & Institutions Code entitled "Regional Youth Programs and Facilities Grant Program."

Appropriates $9.6 million from the state's General Fund to this program, in order to award one-time grants to counties for the purpose of providing resources for infrastructure-related needs and improvements (such as regional placement beds) to assist counties in the development of a "local continuum of care" for juvenile offenders.

Labor Code

Labor C. 6311.5
(New)
(Ch. 288) (AB 2658)
(Effective 1/1/2021)

Creates the new misdemeanor crime of a person willfully and knowingly directing an employee to remain in or enter an area closed pursuant to P.C. 409.5 (public health or safety calamity; natural disaster; accident), after receiving notice to evacuate or leave. Provides that "employee" includes a person employed for household domestic service.

New Labor C. 6311.5 does not include any particular penalty for this new misdemeanor. Existing Labor C. 23 provides that except where a different punishment is prescribed, every offense declared by the Labor Code to be a misdemeanor is punishable by up to six months in jail and/or by a fine of up to $1,000.

The legislative history of the bill refers to newspaper accounts of domestic workers being instructed by their employers to stay and safeguard employers' homes while the employers and their families fled wildfires.

[This bill also amends Labor C. 6310, 6311, and 6399.7 to add domestic employees, so that they are protected from being fired or retaliated against by their employer for refusing to work in hazardous conditions.]

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New Misdemeanors

Labor C. 6311.5
(New)
(Ch. 288) (AB 2658)
(Effective 1/1/2021)

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[This bill also amends Labor C. 6310, 6311, and 6399.7 to add domestic employees, so that they are protected from being fired or retaliated against by their employer for refusing to work in hazardous conditions.]

P.C. 647.9
(New)
(Ch. 219) (AB 2655)
(Effective 1/1/2021)

Creates the new misdemeanor crime of a first responder photographing the image of a deceased person at the scene of an accident or at the scene of a crime for any purpose other than an official law enforcement purpose or a genuine public interest, whether the photo is taken with a personal electronic device or a device belonging to the employing agency. Punishable by a fine of up to $1,000. (Note that despite the crime being labeled a misdemeanor, no jail time is permissible.) Requires every agency that employs first responders to advise them about this prohibition on January 1, 2021.

Defines "first responder" as a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, emergency manager, firefighter, coroner, or an employee of a coroner.

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Note that this new crime does not require the first responder to sell or distribute the photo of the deceased person. The simple act of taking the photo is a violation of P.C. 647.9.

This bill also amends P.C. 1524 to permit a search warrant to be obtained to seize evidence tending to show that a violation of P.C. 647.9 has occurred. See more on P.C. 1524, below.

[According to the legislative history, this bill is in response to several Los Angeles County Sheriff's deputies taking photos, without an investigative purpose, at the scene of the January 2020 helicopter crash that killed basketball star Kobe Bryant and several other people.]

P.C. 653y
(Amended)
(Ch. 327) (AB 1775)
(Effective 1/1/2021)

Creates new misdemeanor and infraction crimes for misusing the 911 emergency system to harass another person. These crimes are in new subdivisions (b) and (c).

New subdivision (b) is the crime of knowingly allowing the use of, or using, the 911 emergency system for the purpose of harassing another person. A first violation is an infraction punishable by a $250 fine **or** a misdemeanor punishable by up to six months in jail and/or by a fine of up to $1,000. A second or subsequent violation is a misdemeanor punishable by up to six months in jail and/or by a fine of up to $1,000. The bill does not provide a definition of "harass."

New subdivision (c) is the misdemeanor crime of knowingly allowing the use of, or using, the 911 emergency system for the purpose of harassing another person and that act is described in P.C. 422.55 or 422.85. Punishable by up to one year in county jail and/or by a fine of between $500 to $2,000.

[P.C. 422.55 defines "hate crime" as a criminal act committed in whole or in part because of the actual or perceived disability, gender, nationality, race, or ethnicity of the victim. P.C. 422.85 sets forth required conditions of probation for specified hate crimes, such as protective orders for victims, racial sensitivity classes, and reimbursement for a victim's counseling expenses. The cross-reference to P.C. 422.85 may be to the types of hate crimes listed in subdivision (a) of P.C. 422.85, for which a court must issue a protective order. P.C. 422.85(a) specifies offenses against a person

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or property committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation.]

Provides that P.C. 653y does not apply to uses of the 911 emergency system by persons with an intellectual disability or other mental disability that makes it difficult or impossible for them to understand the potential consequences of their actions.

Subdivision (a) remains the infraction crime of using the 911 emergency system for any reason other than because of an emergency. Remains punishable by a written warning for a first violation, by a fine of $50 for a second violation, by a fine of $100 for a third violation, and by a fine of $250 for a fourth or subsequent violation.

[This bill also amends Civil C. 47 and 51.7 to provide a means of civil redress for the misuse of the 911 emergency system. Civil C. 47 is amended to provide that deliberately false police reports are **not** privileged. New language in Civil C. 47 provides that a false report to a law enforcement agency that someone is committing a crime or is engaging in activity requiring law enforcement intervention, knowing that the report is false, or with reckless disregard of the truth or falsity of the report, is **not** a privileged communication. Civil C. 51.7 (the Ralph Civil Rights Act of 1976) is amended to define "intimidation by threat of violence" as including making or threatening to make a claim or report to a peace officer or law enforcement agency that falsely alleges another person has engaged in unlawful activity that requires law enforcement intervention, knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report.]

Penal Code

P.C. 290
(Amended to add tiered registration)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 1/1/2021)

and

(Amended when P.C. 288a was renumbered to P.C. 287)
(Ch. 423) (SB 1494)
(2018 Legislation)
(Effective 1/1/2021)

and

(Amended to Eliminate Six Mandatory Registerable Offenses)
(Ch. 79) (SB 145)
(2020 Legislation)
(Effective 1/1/2021)

SB 145 deletes several crimes from the list of offenses requiring registration as a sex offender.

SB 384 converts lifetime registration into a tiered system of sex offender registration.

Deletes Several Crimes From the List of Offenses Requiring Registration as a Sex Offender
Eliminates several crimes from the list of offenses that require registration as a sex offender, **if** at the time of the offense the defendant was *not* more than 10 years older than the minor and **if** the conviction is the only one requiring the defendant to register. Provides that the court may still require registration as a sex offender pursuant to P.C. 290.006 if it finds that the offense was committed as a result of sexual compulsion or for purposes of sexual gratification. The crimes are:

1. P.C. 286(b)(1) (participating in an act of sodomy with a minor);
2. P.C. 286(b)(2) (a person over 21 years of age participating in an act of sodomy with a person under age 16);
3. P.C. 287(b)(1) (participating in an act of oral copulation with a minor, formerly P.C. 288a(b)(1);
4. P.C. 287(b)(2) (a person over 21 years of age participating in an act of oral copulation with a person under age 16, formerly P.C. 288a(b)(2));
5. P.C. 289(h) (participating in an act of sexual penetration with a minor);
6. P.C. 289(i) (a person over 21 years of age participating in an act of sexual penetration with a person under age 16).

The purpose of this change is to equalize registration requirements for sex crimes involving a minor that are often consensual, whether the conduct involves sexual intercourse, oral copulation, sodomy, or sexual penetration, and to equalize the treatment of same sex conduct and heterosexual conduct. P.C. 261.5 (unlawful sexual intercourse with a minor) is not a mandatory registerable offense, but all oral copulation, sodomy, and sexual penetration offenses required registration before this bill became effective. Now the registration consequences for all four forms of non-forcible, sexual conduct are similar.

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In *People v. Hofsheier* (2006) 37 Cal.4th 1185, the California Supreme Court ruled that requiring a defendant convicted of oral copulation with a 16-year-old to register as a sex offender violated equal protection principles because a person convicted of unlawful sexual intercourse with a minor (P.C. 261.5) under the same circumstances would not be subject to registration. The California Supreme Court overruled *Hofsheier* in *Johnson v. Dep't of Justice* (2015) 60 Cal.4th 871, holding that requiring registration for a conviction of non-forcible oral copulation with a minor did not violate equal protection, because there is a rational basis for subjecting intercourse offenders and oral copulation offenders to different registration consequences: intercourse is unique in its potential to result in pregnancy and parenthood; registration might interfere with employment opportunities and cause economic hardship to a child born to a minor victim and adult offender.

Retroactivity: Whether the elimination of these crimes from the list of registerable offenses is retroactive such that offenders currently registering for these crimes will no longer have to register beginning January 1, 2021, is beyond the scope of this publication. Retroactivity will depend on whether having to register as a sex offender is deemed to be punishment and if so, whether a defendant's conviction is final such that the new law would not apply.

The new registration rules will, at a minimum, apply prospectively to any defendant sentenced on or after January 1, 2021, even if the crime was committed before 2021. The general default rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3; and *People v. Brown* (2012) 54 Cal.4th 314, 319.) The exception to the default rule is that when a new law mitigates punishment, it will be presumed to apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740, 745.) SB 145 says nothing about retroactivity. Whether the change in the law eliminating registerable offenses is retroactive will depend on whether registration as a sex offender is deemed to be punishment. It has **not** been deemed to be punishment for purposes of ex post facto analysis or cruel and/or unusual punishment analysis. *People v. Castellanos* (1999) 21 Cal.4th 785 finds that sex offender registration is regulatory in both purpose and effect, and therefore is not punishment for purposes of

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ex post facto analysis. *In re Alva* (2004) 33 Cal.4th 254 finds that requiring registration as a sex offender is not punishment in the context of cruel and/or unusual punishment analysis.

Keep in mind that all of the eliminated offenses fit into Tier One of the new tiered registration system (see below), so any offender who is required to register based solely on one of the eliminated offenses will be able to petition for registration termination after registering for 10 years, whether or not SB 145 is retroactive.

Tiered Sex Offender Registration
Converts lifetime registration for sex offenders into a tiered system of sex offender registration. Tier One adult offenders must register for a minimum of 10 years, Tier Two adult offenders for a minimum of 20 years, and Tier Three adult offenders for life. (SB 384 was passed in 2017 with a three-year delayed implementation date.)

See P.C. 290.008, below, for provisions regarding juvenile offenders who must register for a minimum of five years (Tier One) or a minimum of ten years (Tier Two).

Beginning July 1, 2021, permits Tier One and Tier Two adult offenders to petition the court to have their registration obligations terminated at the 10- or 20-year mark and, if termination is denied, offenders may continue to seek termination every one to five years, at the court's discretion. Also permits Tier Two adult offenders to petition early for registration termination (at the 10-year mark) and sets forth procedures for specified Tier Three offenders (lifetime registrants) to petition for registration termination after 20 years. Permits juvenile offenders to petition for registration termination after their five- or 10-year registration periods. (See P.C. 290.5, below, for registration termination procedures.)

Attempted Crimes and Conspiracies
P.C. 290 continues to require registration as a sex offender for a conviction of an attempt to commit an offense listed in P.C. 290 or of a conspiracy to commit an offense listed in P.C. 290. Many attempt and conspiracy crimes will be Tier One offenses, unless they qualify as serious felonies (P.C. 1192.7(c)) or violent felonies (P.C. 667.5(c)), in which case they would be at least a Tier Two offense. Keep in mind

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that any attempt to commit a serious felony is a serious felony other than an assault (P.C. 1192.7(c)(39)), but that an attempted violent felony is not necessarily a violent felony. An attempt or conspiracy conviction might also qualify as a Tier Three offense (e.g., an offender whose risk level on the static risk assessment instrument for sex offenders (SARATSO) pursuant to P.C. 290.4 is well above average at the time of release is a Tier Three offender).

Tier One Adult Offenses (10-Year Minimum Registration)
Tier One offenses are:

a. Misdemeanors not on the Tier Two or Tier Three lists.
b. Any felony that is not serious (P.C. 1192.7(c)) or violent (P.C. 667.5(c)) and is not on the Tier Two or Tier Three lists.

Specifically provides that Tier One does not apply if the offender is subject to registration as a Tier Two or Tier Three offender. For example, the possession of child pornography in violation of P.C. 311.11 is a non-serious, non-violent felony, but it is on the Tier Three list. A violation of P.C. 288.2 (sending or exhibiting harmful matter to a minor) can be charged as a misdemeanor or a felony, but all violations of P.C. 288.2 are Tier Three offenses.

Tier Two Adult Offenses (20-Year Minimum Registration)
Tier Two offenses are:

a. Serious felonies (P.C. 1192.7(c)) not specified on the Tier Three list.
b. Violent felonies (P.C. 667.5(c)) not specified on the Tier Three list.
c. P.C. 285 (incest).
d. P.C. 286(g) and (h) (sodomy where victim was not capable of giving legal consent).
e. P.C. 287(g) and (h) (oral copulation where victim was not capable of giving legal consent).
f. Former P.C. 288a(g) and (h) (oral copulation where victim was not capable of giving legal consent).
g. P.C. 289(b) (sexual penetration where victim was not capable of giving legal consent).
h. A second or subsequent conviction of P.C. 647.6 that was brought and tried separately (annoying or molesting a child).

Provides that Tier Two does **not** apply if the offender is subject to lifetime registration (Tier Three).

continued

Tier Three Adult Offenses (Lifetime Registration)
Tier Three offenses are:

1. An offender convicted of any of the following crimes:

    a. P.C. 187 (murder) while attempting to commit or actually committing a specified sex crime (P.C. 261, 286, 287, 288, former P.C. 288a, 289).

    b. P.C. 207 (kidnapping) or P.C. 209 (kidnapping), with the intent to violate P.C. 261, 286, 287, 288, former P.C. 288a, or 289.

    c. P.C. 220 (assault with intent to commit a sex crime).

    d. P.C. 236.1(b) (human sex trafficking).

    e. P.C. 236.1(c) (human sex trafficking of a minor).

    f. A felony violation of P.C. 243.4(a), (c), or (d). (P.C. 243.4(a) is sexual battery on an unlawfully restrained person; P.C. 243.4(c) is sexual battery on an unconscious victim; P.C. 243.4(d) is sexual battery on an unlawfully restrained person, or on a person who is institutionalized for medical treatment and is seriously disabled or medically incapacitated, that causes the victim to masturbate or touch an intimate part of another person.)

    g. P.C. 261(a)(2) (forcible rape), 261(a)(3) (rape of an intoxicated victim), or P.C. 261(a)(4) (rape of an unconscious victim). [The list of Tier Three offenses also includes a violation of P.C. 261 that is punished pursuant to P.C. 264(c)(1) or 264(c)(2), but since these subdivisions require an underlying conviction of P.C. 261(a)(2), it was not necessary to include them in this Tier Three list because any conviction of P.C. 261(a)(2) is a Tier Three offense. P.C. 264(c)(1) provides enhanced punishment for the forcible rape of a child under age 14 and 264(c)(2) provides enhanced punishment for the forcible rape of a minor age 14 or older.]

    h. P.C. 262(a)(1) (forcible spousal rape).

continued

i. P.C. 264.1 (voluntarily acting in concert and by force, and committing rape in violation of P.C. 261 or 262 or committing sexual penetration in violation of 289).

j. P.C. 266h(b) (pimping involving a minor victim).

k. P.C. 266i(b) (pandering involving a minor victim).

l. P.C. 266j (procuring a child under age 16 for purposes of a lewd act or inducing a child under age 16 to engage in a lewd act).

m. P.C. 267 (abduction of a minor for purposes of prostitution).

n. P.C. 269 (aggravated sexual assault of a child).

o. Any violation of P.C. 272 (contributing to the delinquency of a minor) involving lewd or lascivious conduct.

p. P.C. 286(c)(2) (forcible sodomy), P.C. 286(d) (forcible sodomy or sodomy by threatening to retaliate in the future, while voluntarily acting in concert), P.C. 286(f) (sodomy of an unconscious victim), P.C. 286(i) (sodomy of an intoxicated victim).

q. P.C. 287(c)(2) or former P.C. 288a(c)(2) (forcible oral copulation), P.C. 287(d) or former P.C. 288a(d) (forcible oral copulation or oral copulation by threatening to retaliate in the future or oral copulation where victim is not capable of giving legal consent, while voluntarily acting in concert), P.C. 287(f) or former P.C. 288a(f) (oral copulation of an unconscious victim), P.C. 287(i) or former P.C. 288a(i) (oral copulation of an intoxicated victim).

r. Two convictions of P.C. 288(a) (child molestation), but the convictions must be in two proceedings that were brought and tried separately.

s. P.C. 288(b) (forcible child molestation, or forcible lewd act on a dependent person by a caretaker).

t. P.C. 288(c) (lewd act on a child age 14 or 15 where the defendant is at least 10 years older, or lewd act on a dependent person by a caretaker).

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u. P.C. 288.2 (sending or exhibiting harmful matter to a minor).

v. P.C. 288.3 (contacting or communicating with a minor to commit a specified sex offense, but **not** P.C. 286(b) (sodomy of a minor), P.C. 287(b) (oral copulation of a minor), former P.C. 288a(b) (oral copulation of a minor), P.C. 289(h) (sexual penetration of a minor), or P.C. 289(i) (sexual penetration of a minor under age 14 where the defendant is more than 10 years older).

w. P.C. 288.4 (arranging a meeting with a minor for the purpose of exposing private parts or engaging in lewd behavior).

x. P.C. 288.5 (continuous sexual abuse of a child).

y. P.C. 288.7 (sex acts by an adult on a child who is 10 years old or younger).

z. P.C. 289(a)(1) (forcible sexual penetration), P.C. 289(d) (sexual penetration of an unconscious victim), P.C. 289(e) (sexual penetration of an intoxicated victim), P.C. 289(j) (sexual penetration of a minor under age 14 where the offender is more than 10 years older).

aa. A felony violation of P.C. 311.1 (sending, preparing, possessing, etc., obscene matter depicting a person under age 18 engaging in or simulating sexual conduct).

bb. P.C. 311.2(b) (sending, preparing, possessing, etc., for commercial consideration, obscene matter depicting a person under age 18 engaging in or simulating sexual conduct), P.C. 311.2(c) (sending, preparing, possessing, etc., matter depicting a person under age 18 engaging in or simulating sexual conduct with the intent to distribute to an adult), P.C. 311.2(d) (sending, preparing, possessing, etc., matter depicting a person under age 18, engaging in or simulating sexual conduct with the intent to distribute to a minor).

cc. P.C. 311.3 (sexual exploitation of a child: producing child pornography).

continued

dd. P.C. 311.4 (hiring, using, persuading, or coercing a minor to perform or simulate sex acts).

ee. P.C. 311.10 (advertising for sale obscene matter depicting a person under age 18 engaging in or simulating sexual conduct).

ff. A felony violation of P.C. 311.11 (possession of child pornography).

gg. P.C. 653f(c) (solicitation to commit forcible rape, forcible sodomy, forcible oral copulation, or any violation of P.C. 264.1 [voluntarily acting in concert to commit rape or sexual penetration], P.C. 288 [lewd act on a child or dependent adult], or P.C. 289 [sexual penetration]).

hh. Any offense for which a person is sentenced to a life term pursuant to P.C. 667.61 (the "one-strike" sex offender law).

2. An offender, who, after being convicted of a registerable offense is subsequently convicted in a separate proceeding of:

   a. A registerable offense that qualifies as a violent felony (P.C. 667.5(c)); or

   b. Any violent felony (P.C. 667.5(c)) for which the offender is ordered to register pursuant to P.C. 290.006 (i.e., where the court finds that the offender committed the offense as a result of a sexual compulsion or for purposes of sexual gratification).

3. An offender committed to a state mental hospital as a sexually violent predator pursuant to W&I 6600–6609.3.

4. An offender whose risk level on the static risk assessment instrument for sex offenders (SARATSO) pursuant to P.C. 290.4 is well above average at the time of release.

5. An offender who is a habitual sex offender pursuant to P.C. 667.71.

6. An offender required to register pursuant to P.C. 290.004 (an offender convicted of a registerable offense but who

continued

was found not guilty by reason of insanity in the sanity phase of the trial, or a person determined to be a mentally disordered sex offender under W&I 6331–6332).

Out-of-State Offenses
P.C. 290(d)(4) provides that an offender who is required to register for an out-of-state offense (pursuant to P.C. 290.005) shall be placed in the appropriate tier if the offense is equivalent to a California registerable offense.

Provides that if there is no California-equivalent offense, the person will generally be subject to registration as a Tier Two offender. Under three specified circumstances, the person will be subject to registration as a Tier Three offender when:

a. The offender's risk level on the SARATSO risk assessment is well above average risk; or
b. The offender is subsequently convicted of an offense that is substantially similar to a California-registerable offense and is also substantially similar to a violent felony (P.C. 667.5(c)) or P.C. 269 (aggravated sexual assault of a child) or P.C. 288.7 (sex acts on a child age 10 or younger); or
c. The offender has ever been committed to a mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator.

Tier-To-Be-Determined Category
P.C. 290(d)(5) authorizes the Dep't of Justice (DOJ) to place any person required to register as a sex offender in a "tier-to-be-determined" category if his or her appropriate tier designation cannot be immediately ascertained. Individuals in this category must continue to register and any period during which they register will count towards their eventually determined mandated minimum registration period. DOJ has 24 months from the time an offender is placed in this category to determine his or her appropriate tier.

Registration Periods and Tolling
P.C. 290(e) provides that the minimum registration period for Tier One or Tier Two offenders starts on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum registration time is tolled during any period of subsequent incarceration, placement, or commitment,

continued

including any subsequent civil commitment, **except that** arrests not resulting in conviction, adjudication, or revocation of probation or parole shall *not* toll the registration period. The minimum registration period is extended by one year for each misdemeanor conviction of failing to register, and by three years for each felony conviction of failing to register, regardless of the time served for any failure-to-register conviction.

Note: The criminal history of an offender who files a registration termination petition will need to be closely scrutinized to see if the minimum registration term was ever tolled or extended.

Provides that if a registrant is subsequently convicted of another offense requiring registration, a new minimum registration time period will begin upon the offender's release from incarceration, placement, or commitment. Provides that an offender's applicable tier is the highest tier associated with the convictions (e.g., a defendant who commits a Tier One offense and begins the 10-year registration period, then commits a Tier Three offense, will have to register for life).

P.C. 290.006
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 1/1/2021)

and

(Amended)
(Ch. 79) (SB 145)
(2020 Legislation)
(Effective 1/1/2021)

Provides that if a court requires an offender to register for an offense not included in P.C. 290, because the court finds that the offender committed the offense as a result of sexual compulsion or for purposes of sexual gratification, the offender will be put into the Tier One category, which requires registration for a minimum of 10 years, unless the court finds that the offender should register as a Tier Two (20 years) or Tier Three (lifetime) offender. (See P.C. 290, above, for more on tiered sex registration.)

Provides that in determining whether to require an offender to register as a Tier Two or Tier Three offender, the court must consider the following:

1. The nature of the registerable offense.

2. The age and number of victims, and whether any victim was personally known to the offender at the time of the offense. Provides that any victim known to the offender for fewer than 24 hours is **un**known to the offender for purposes of this paragraph.

continued

3. The criminal and relevant noncriminal behavior of the offender before and after conviction for the registerable offense.

4. Whether the offender has previously been arrested for, or convicted of, a sexually motivated offense.

5. The offender's current risk of sexual or violent re-offense, including the person's risk level on the SARATSO static risk assessment instrument, and if available from past supervision for a sexual offense, the offender's risk level on the SARATSO dynamic and violence risk assessment instruments.

P.C. 290.008
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 1/1/2021)

and

(Amended when P.C. 288a was renumbered to P.C. 287)
(Ch. 423) (SB 1494)
(2018 Legislation)
(Effective 1/1/2021)

Creates a tiered system of registration for juvenile sex offenders. Tier One offenders are required to register for a minimum of five years and Tier Two offenders are required to register for a minimum of ten years. (SB 384 was passed in 2017 with a three-year delayed implementation date.)

The offenses listed in P.C. 290.008 that require registration remain the same, and the section continues to require registration when an offender is discharged or paroled from CDCR after having been adjudicated a ward of the juvenile court because of the commission or attempted commission of an offense specified in P.C. 290.008.

Permits juvenile offenders to petition for registration termination after the five- or 10-year registration period. Requires that the termination petition be filed in the juvenile court in the county in which the offender is registered. (See P.C. 290.5, below, for details about registration termination procedures.)

Tier One Juvenile Offenses (5-Year Minimum Registration)
Tier One offenses are crimes specified in P.C. 290.008(c) that are not serious felonies (P.C. 1192.7(c)) or violent felonies (P.C. 667.5(c)). Tier One offenses are attempted or completed violations of these crimes: P.C. 266c (inducement to engage in sex act by fraud or fear); P.C. 267 (abducting a minor for purposes of prostitution); P.C. 286(b)(1) (sodomy with a person under age 18); P.C. 287(b)(1) or former P.C. 288a(b)(1) (oral copulation with a person under age 18); P.C. 288(b)(2) (forcible lewd act by a caretaker on a dependent person); P.C. 288(c)(1) (lewd act on a child age 14 or 15 where

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defendant is at least 10 years older); P.C. 288(c)(2) (non-forcible lewd act by a caretaker on a dependent adult); and P.C. 647.6 (annoying or molesting a child).

Tier Two Juvenile Offenses (10-Year Minimum Registration) Tier Two offenses are felonies specified in P.C. 290.008(c) that are serious felonies (P.C. 1192.7(c)) or violent felonies (P.C. 667.5(c)). Keep in mind that pursuant to P.C. 1192.7(c)(39), an attempt to commit a serious felony is a serious felony. Tier Two offenses are attempted or completed violations of these crimes: P.C. 207 or 209 (kidnapping with the intent to violate P.C. 261, 286, 287, 288, 289, or former P.C. 288a); P.C. 220 (assault with intent to commit rape, sodomy, oral copulation, P.C. 264.1, 288, or 289); Rape in violation of P.C. 261(a)(1), (a)(2), (a)(3), (a)(4), or (a)(6); P.C. 264.1 (forcible rape or sexual penetration in concert); P.C. 286(c) (sodomy on a child under age 14 or by force or by threat to retaliate); P.C. 286(d) (sodomy in concert by force or by threat to retaliate); P.C. 287(c) or former P.C. 288a(c) (oral copulation on a child under age 14 or by force or by threat to retaliate); P.C. 287(d) or former P.C. 288a(d) (oral copulation in concert by force or by threat to retaliate or where victim was not capable of giving legal consent); P.C. 288(a) (lewd act on a child under age 14); P.C. 288(b)(1) (forcible lewd act on a child under age 14); P.C. 288.5 (continuous sexual abuse of a child under age 14); and P.C. 289(a) (sexual penetration by force or by threat to retaliate).

P.C. 290.45
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 1/1/2021)

Continues to permit law enforcement to disclose information about a person required to register as a sex offender when necessary to ensure public safety, based on information available to law enforcement concerning the person, and adds that the information concerning the offender must pertain to his or her "current risk of sexual or violent re-offense, including, but not limited to, the person's static, dynamic, and violence risk levels on the SARATSO risk tools described in subdivision (f) of Section 290.04." [SARATSO = State-Authorized Risk Assessment Tool for Sex Offenders.]

Continues to provide that a person who uses information disclosed pursuant to this section to commit a felony is punishable by a five-year enhancement.

Continues to provide that a person who uses information disclosed pursuant to this section to commit a misdemeanor is subject to an additional fine of $500 to $1,000.

P.C. 290.46
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 1/1/2022)

and

(Amended when P.C. 288a was renumbered to P.C. 287)
(Ch. 423) (SB 1494)
(2018 Legislation)
(Effective 1/1/2022)

Beginning January 1, 2022, makes some changes to the Dep't of Justice (DOJ) Megan's Law website, which provides sex offender information to the public.

Adds references to Tier Two and Tier Three offenses and revises which offenders may request to be excluded from the website. Provides that an address must be made available for a specified list of offenders and Tier Three offenders, and that the community of residence and ZIP code must be made available for Tier Two offenders and offenders convicted of a violation or attempted violation of P.C. 647.6 (annoying or molesting a child).

Retains these two categories of offenders who may continue to apply to be excluded from the website if their only registerable offense is either:

1. An offense for which the offender successfully completed probation; or

2. An offense for which the offender is on probation at the time of application; **and** for either type of offender, the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to P.C. 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

[See P.C. 290, above, for a description of the new tiered sex offender registration system effective January 1, 2021.]

P.C. 290.5
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 7/1/2021)

and

(Amended)
(Ch. 29) (SB 118)
(2020 Legislation)
(Effective 7/1/2021)

Overview
Sets forth the procedures for adult and juvenile sex offenders to petition the court to terminate the duty to register as a sex offender. Tier One adult offenders are subject to registration for a minimum of 10 years, Tier Two adult offenders are subject to registration for a minimum of 20 years, and Tier Three adult offenders are subject to registration for life. Tier One juvenile offenders are subject to registration for a minimum of five years and Tier Two juvenile offenders are subject to registration for a minimum of 10 years. [See P.C. 290, above, for more on tiered registration for adults and see P.C. 290.008, above, for more on tiered registration for juveniles.]

continued

Also sets forth procedures for specified Tier Two adult offenders to petition early for registration termination (at the 10-year mark) and sets forth procedures for specified Tier Three adult offenders (lifetime registrants) to petition for registration termination after 20 years.

When a Petition to Terminate Registration May Be Filed
Beginning July 1, 2021, permits Tier One and Tier Two adult offenders to petition for registration termination on or after their next birthday following the expiration of the 10- or 20-year registration period. Permits juvenile offenders (those required to register pursuant to P.C. 290.008) to petition for registration termination on or after their next birthday following the expiration of the 5- or 10-year registration period. By permitting a petition to be filed only after the offender's next birthday and not simply on or after July 1, 2021, the filing of petitions will be spaced out instead of being filed all at once in July 2021 by offenders who have already been registering for 5 or 10 or 20 years.

Where the Termination Petition Must Be Filed
For offenders required to register pursuant to P.C. 290, the termination petition must be filed in the superior court in the county in which the offender is registered. For offenders required to register pursuant to P.C. 290.008 (offenders required to register for juvenile offenses), the termination petition must be filed "in the juvenile court" (presumably in the county where the person is currently registered).

What the Petition Must Contain
Requires that the petition contain proof of the offender's current registration as a sex offender.

Who Must Be Served
Requires that the petition be served on the registering law enforcement agency and on the district attorney in the county where the petition is filed, and on the law enforcement agency and the district attorney of the county of conviction, if different from the county where the petition is filed.

Law Enforcement Agency Duties
Requires the registering law enforcement agency to report receipt of the petition to the Dep't of Justice.

Requires the registering law enforcement agency and the law enforcement agency of the county of conviction, if

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different from the registering agency, to report to the district attorney **and** to the superior court or juvenile court, within 60 days of receiving the petition, whether the offender has met the requirements for registration termination set forth in P.C. 290(e).

[P.C. 290(e) provides that the minimum registration period for Tier One or Tier Two offenders starts on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum registration time is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, *except that* arrests not resulting in conviction, adjudication, or revocation of probation or parole shall *not* toll the registration period.

The minimum registration period is extended by one year for each misdemeanor conviction of failing to register, and by three years for each felony conviction of failing to register, regardless of the time served for any failure-to-register conviction.

Note: The criminal history of an offender who files a registration termination petition will need to be closely scrutinized to see if the minimum registration term was ever tolled or extended.

P.C. 290(e) provides that if a registrant is subsequently convicted of another offense requiring registration, a new minimum registration time period will begin upon the offender's release from incarceration, placement, or commitment. Provides that an offender's applicable tier is the highest tier associated with the convictions (e.g., a defendant who commits a Tier One offense and begins the registration period, then commits a Tier Three offense, will have to register for life).]

Requesting a Hearing
Authorizes the district attorney in the county where the petition is filed to request a hearing on the petition if the offender has not fulfilled the requirements for termination or if "community safety would be significantly enhanced" by the offender's continued registration. The request for a hearing by the district attorney must be made within 60 days of receiving the report from the registering law enforcement agency, the law enforcement agency in the county of

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conviction if different from the registering agency, or the district attorney in the county of conviction.

When No Hearing Is Requested
Provides that if no hearing is requested, the court must grant the termination petition if

1. There is proof of current registration in the petition; and
2. The registering agency reports that the offender meets the P.C. 290(e) requirements for termination; and
3. The person is not in custody or on parole, probation, or supervised release; and
4. There are no pending charges against the person that could extend the time to complete the registration requirements of the tier or change the offender's tier status.

Summary Denial of a Petition
Authorizes the court to summarily deny a registration termination petition if the court determines the petitioner does not meet the requirements for termination or if the petitioner has not fulfilled the filing and service requirements for the petition. Requires the court to state the reason or reasons for summarily denying a petition.

The Hearing on a Registration Termination Petition
Permits the district attorney to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. Requires the court to consider the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for fewer than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not re-offended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or violent re-offense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. [SARATSO = State-Authorized Risk Assessment Tool for Sex Offenders.]

Permits the court's decision about registration termination to be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties that is reliable, material, and relevant.

continued

Does not specify a standard of proof for the hearing or mention burden of proof. Since it is the offender who is seeking registration termination, the offender should have the burden of proof as to whether registration should be terminated. Existing Evidence C. 500 provides that except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief he or she is asserting. The offender's burden of proof may be by a preponderance of the evidence. Existing Evidence C. 115 provides that except as otherwise provided by law, the burden of proof is by a preponderance of the evidence.

If Registration Termination Is Denied
If registration termination is denied, the court must set a time period of between one and five years from the date of denial for the offender to be permitted to re-petition for termination. Requires the court to state on the record the reason for the time period it selects.

The Court's Duty Upon Granting or Denying a Petition
Requires the court to report the granting, denial, or summary denial of registration termination to the California Sex Offender Registry within DOJ. If a petition is denied, the court must also report the time period the offender must wait before re-petitioning for registration termination.

Some Tier Two Offenders May Petition Early for Registration Termination
Permits a Tier Two offender to petition for registration termination after only 10 years (instead of 20 years) if *all* of the following apply:

1. The registerable offense involved no more than one victim age 14 to 17 years;
2. The offender was under 21 years of age at the time of the offense;
3. The registerable offense is **not** a violent felony listed in P.C. 667.5(c) (except P.C. 288(a)—lewd or lascivious act on a child under age 14);
4. The registerable offense is not specified in P.C. 236.1 (human trafficking);
5. The offender has not been convicted of a new offense requiring sex offender registration or convicted of a violent felony (P.C. 667.5(c)) since being released from custody on the registerable offense; and
6. The offender has registered for 10 years.

continued

Provides that if the petition is denied, the offender cannot re-petition for termination for at least one year.

A Limited Group of Tier Three Offenders May Petition For Termination of Lifetime Registration
Permits a Tier Three offender who is required to register for life solely based on his or her risk level pursuant to P.C. 290(d)(3)(D) (risk level on the SARATSO assessment is well above average risk at the time of release into the community) to petition for registration termination 20 years after release from custody if the person:

1. Has not been convicted of a new offense requiring sex offender registration or convicted of a violent felony (P.C. 667.5(c)) since being released on the registerable offense; and
2. Has registered for 20 years.

Provides that if the petition is denied, the person cannot re-petition for termination for at least three years.

Provides that an offender convicted of P.C. 288 or an offense listed in P.C. 1192.7(c) (the list of serious felonies) who is required to register as a Tier Three offender based on risk level pursuant to P.C. 290(d)(3)(D) is *not* permitted to petition for termination.

P.C. 295
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Amends subdivision (j) to eliminate a cross-reference to P.C. 1203.1e, which is repealed by this bill as of July 1, 2021. There are no substantive changes to any DNA provisions in P.C. 295.

Subdivision (j) continues to permit the court to order that a portion of the costs assessed pursuant to P.C. 1203.1c (the reasonable cost of incarceration in a local detention facility) or P.C. 1203.1m (the reasonable cost of imprisonment in the state prison) include a reasonable portion of the cost of obtaining a DNA specimen, sample, and print impressions. Only the cross-reference to P.C. 1203.1e is deleted.

P.C. 1203.1e permitted the court, after an ability to pay hearing, to charge a county jail inmate released onto county parole, all or a portion of the reasonable cost of providing county parole supervision. AB 1869 eliminates numerous court-imposed administrative fees, effective July 1, 2021,

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including the costs of county parole supervision. Other fees eliminated include city and county jail booking fees, public defender fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 368.5
(Amended)
(Ch. 247) (SB 1123)
(Effective 1/1/2021)

Adds a cross-reference to W&I 15610–15610.70, in order to provide that the definitions of "abandonment," "abduction," "financial abuse," "goods and services necessary to avoid physical harm or mental suffering," "isolation," "mental suffering," "neglect," and "physical abuse" have the same meaning as those in W&I 15610–15610.70.

P.C. 368.5 continues to provide that any revision to a law enforcement agency's policy manual must include the elements of specified crimes against elders and dependent adults, a statement that law enforcement agencies have the responsibility to investigate elder and dependent adult abuse and criminal neglect, and the definitions of the above terms.

P.C. 396
(Amended)
(Ch. 339) (SB 1196)
(Effective 1/1/2021)

Makes several changes to the crime of price gouging, which prohibits increasing the cost, by more than a specified amount, of essential goods and services during an emergency.

Adds pandemics and epidemic disease outbreaks to the list of emergency events (earthquakes, floods, fire, riots, etc.) that this section applies to. Adds that excessive prices charged for goods and services during or shortly after a declared state of emergency or local emergency are illegal, **whether offered or sold in person, in stores, or online**. Uncodified Section Two of the bill provides that these changes do not constitute a change in the law but are declaratory of existing law.

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Expands price gouging to apply to charging a price of more than 10 percent greater for specified goods or services **prior to a date set in the proclamation or declaration**. Price gouging continues to also apply to charging a price of more than 10 percent greater than the price charged immediately prior to the proclamation or declaration of emergency.

Expands price gouging to apply to a person or business that did **not** charge a price for goods or services immediately prior to the declaration of an emergency, and limits the selling price during an emergency to no more than 50 percent greater than the cost of the goods or services to the vendor. Thus, if a person who never sold personal protective equipment before an emergency, goes out and buys such equipment and sells it during a state of emergency, he or she may not charge more than 50 percent above what it cost to acquire the merchandise. This amendment closes the "new seller" loophole. [The legislative history of the bill highlights unscrupulous people depleting store shelves of vital goods during COVID-19 and then selling the goods for exorbitantly high prices.]

Adds that if price gouging prohibitions are extended for additional periods (existing law permits 30-day extensions), such an extension may also authorize specified price increases that are more than the amount that would be permissible during the initial period after a proclamation or declaration of emergency.

Amends subdivision (*l*) to add "a service" so that the section now applies to an item for sale or a service. Thus, a business offering an item for sale, or a service, at a reduced price immediately before a proclamation or declaration of emergency may use the price it normally charges for the item or service when calculating the maximum 10 percent increase it is permissible to charge.

P.C. 489
(Amended)
(Ch. 232) (SB 903)
(Effective 9/28/2020)

Amends subdivision (c) to correct a cross-reference for the distribution of funds from P.C. 487k fines (the theft of agricultural equipment) to the Central Valley Rural Crime Prevention Program (P.C. 14170–14174) and to the Central Coast Rural Crime Prevention Program (P.C. 14180–14182). Previously, even though both programs were specified in P.C. 489(c)(2), a funding formula was provided only for one of the programs by including a reference only to P.C. 14173. The new cross-reference is to P.C. 13821(c)(12), which lists

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all of the counties the two programs apply to, with specific percentages for each.

P.C. 532b
(Amended)
(Ch. 97) (AB 2193)
(Effective 1/1/2021)

Changes the name of the State Military Reserve to the State Guard so that the reference is consistent with the name change that was made administratively in 2019 by the Adjutant General. (According to the legislative history of the bill, California's State Guard is an all-volunteer body with about 1,200 members. It assists civil authorities during domestic emergencies and assists the National Guard.)

P.C. 532b is called the "California Stolen Valor Act" and specifies a number of misdemeanor crimes related to persons who fraudulently represent themselves in various ways as military veterans or ex-servicemembers. Several of the crimes prohibit representing one's self as a veteran or member of the United States Armed Services, the California National Guard, the Naval Militia, or the State Guard (previously referred to as the State Military Reserve).

[This bill makes this same change in a number of statutes in the Education Code, the Government Code, the Military & Veterans Code, and the Revenue & Taxation Code.]

P.C. 647.9
(New)
(Ch. 219) (AB 2655)
(Effective 1/1/2021)

Creates the new misdemeanor crime of a first responder photographing the image of a deceased person at the scene of an accident or at the scene of a crime for any purpose other than an official law enforcement purpose or a genuine public interest, whether the photo is taken with a personal electronic device or a device belonging to the employing agency. Punishable by a fine of up to $1,000. (Note that despite the crime being labeled a misdemeanor, no jail time is permissible.) Requires every agency that employs first responders to advise them about this prohibition on January 1, 2021.

Defines "first responder" as a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, emergency manager, firefighter, coroner, or an employee of a coroner.

Note that this new crime does not require the first responder to sell or distribute the photo of the deceased person. The simple act of taking the photo is a violation of P.C. 647.9.

continued

This bill also amends P.C. 1524 to permit a search warrant to be obtained to seize evidence tending to show that a violation of 647.9 has occurred. See more on P.C. 1524, below.

[According to the legislative history, this bill is in response to several Los Angeles County Sheriff's deputies taking photos, without an investigative purpose, at the scene of the January 2020 helicopter crash that killed basketball star Kobe Bryant and several other people.]

P.C. 653y
(Amended)
(Ch. 327) (AB 1775)
(Effective 1/1/2021)

Creates new misdemeanor and infraction crimes for misusing the 911 emergency system to harass another person. These crimes are in new subdivisions (b) and (c).

New subdivision (b) is the crime of knowingly allowing the use of, or using, the 911 emergency system for the purpose of harassing another person. A first violation is an infraction punishable by a $250 fine **or** a misdemeanor punishable by up to six months in jail and/or by a fine of up to $1,000. A second or subsequent violation is a misdemeanor punishable by up to six months in jail and/or by a fine of up to $1,000. The bill does not provide a definition of "harass."

New subdivision (c) is the misdemeanor crime of knowingly allowing the use of, or using, the 911 emergency system for the purpose of harassing another person and that act is described in P.C. 422.55 or 422.85. Punishable by up to one year in county jail and/or by a fine of between $500 to $2,000.

[P.C. 422.55 defines "hate crime" as a criminal act committed in whole or in part because of the actual or perceived disability, gender, nationality, race, or ethnicity of the victim. P.C. 422.85 sets forth required conditions of probation for specified hate crimes, such as protective orders for victims, racial sensitivity classes, and reimbursement for a victim's counseling expenses. The cross-reference to P.C. 422.85 may be to the types of hate crimes listed in subdivision (a) of P.C. 422.85, for which a court must issue a protective order. P.C. 422.85(a) specifies offenses against a person or property committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation.]

Provides that P.C. 653y does not apply to uses of the 911 emergency system by persons with an intellectual disability or other mental disability that makes it difficult or impossible

continued

for them to understand the potential consequences of their actions.

Subdivision (a) remains the infraction crime of using the 911 emergency system for any reason other than because of an emergency. Remains punishable by a written warning for a first violation, by a fine of $50 for a second violation, by a fine of $100 for a third violation, and by a fine of $250 for a fourth or subsequent violation.

[This bill also amends Civil C. 47 and 51.7 to provide a means of civil redress for the misuse of the 911 emergency system. Civil C. 47 is amended to provide that deliberately false police reports are **not** privileged. New language in Civil C. 47 provides that a false report to a law enforcement agency that someone is committing a crime or is engaging in activity requiring law enforcement intervention, knowing that the report is false, or with reckless disregard of the truth or falsity of the report, is **not** a privileged communication. Civil C. 51.7 (the Ralph Civil Rights Act of 1976) is amended to define "intimidation by threat of violence" as including making or threatening to make a claim or report to a peace officer or law enforcement agency that falsely alleges another person has engaged in unlawful activity that requires law enforcement intervention, knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report.]

P.C. 667.16
P.C. 670
(Amended)
(Ch. 364) (SB 1189)
(Effective 1/1/2021)

Expands the one-year sentence enhancement in P.C. 667.16 for a felony violation of P.C. 470 (forgery), P.C. 487 (grand theft), or P.C. 532 (defrauding of money or property by false representation) that involves defrauding an owner of a residential or nonresidential structure, mobile home, or manufactured home in connection with repairs for damage caused by a natural disaster, by adding **improvements** to a structure **or property**, and by adding the verbiage: "or by adding to, or subtracting from, grounds in connection therewith." Therefore, this enhancement now applies to a felony conviction of P.C. 470, 487, or 532 that involves defrauding an owner of a residential or nonresidential structure, mobile home, or manufactured home in connection with the offer or performance of repairs or improvements to the structure or property, or by adding to, or subtracting from, grounds in connection therewith, for damage caused by a natural disaster for which a state of emergency is proclaimed by the Governor or the President of the United States.

continued

Expands the sentencing provisions in P.C. 670 for a violation of B&P 7158, 7159, 7161, P.C. 470, 484, 487, or 532 that involves defrauding an owner of a residential or nonresidential structure in connection with repairs for damage caused by a natural disaster, by adding **improvements** to a structure **or property**, and by adding the verbiage: "or the adding to, or subtracting from, grounds in connection therewith." Therefore, P.C. 670 now applies to a conviction of B&P 7158, 7159, 7161, P.C. 470, 484, 487, or 532 that involves defrauding an owner of a residential or nonresidential structure in connection with the offer or performance of repairs or improvements to the structure or property, or the adding to, or subtracting from, grounds in connection therewith, for damage or destruction caused by a natural disaster for which a state of emergency is proclaimed by the Governor or the President of the United States.

P.C. 670 continues to provide that the maximum or prescribed fines for a specified offense shall be doubled. It also continues to provide that if an offender has been previously convicted of a specified *felony* offense, the offender is subject to a one-year sentence enhancement. And, it continues to require the court to order the defendant to make full restitution and to impose a probation period of at least five years or until full restitution is made, whichever occurs first.

[This bill also makes amendments to B&P 7028.16, 7055, and 7151, and adds new B&P 7057.5 regarding a new building contractor license classification for residential remodeling. See the Business & Professions Code section of this digest for more information.]

P.C. 679.10
P.C. 679.11
(Amended)
(Ch. 187) (AB 2426)
(Effective 1/1/2021)

Makes two changes to the U-Visa (P.C. 679.10) and T-Visa (P.C. 679.11) 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.

1. Clarifies that "state or local law enforcement agency" (one of the listed certifying entities) includes the police department of the University of California, a California State University campus, or the police department of a school district.

2. Prohibits a certifying official from refusing to complete the form that certifies helpfulness or cooperation in a

continued

criminal case, solely because the case has already been prosecuted (i.e., is over or closed), or because the statute of limitations for filing charges has expired. Continues to provide that a current investigation, the filing of charges, or a conviction, are not required in order for a non-citizen victim to obtain a visa.

[P.C. 679.10 U-Visas apply to a number of crimes such as sexual assault, domestic violence, kidnapping, false imprisonment, murder, stalking, and extortion. P.C. 679.11 T-Visas apply to human trafficking crimes.]

P.C. 745
(New)
(Ch. 317) (AB 2542)
(Section 3.5)
(Effective 1/1/2021)

The California Racial Justice Act of 2020.

Prohibits the state from seeking or obtaining a criminal conviction, or imposing a sentence, on the basis of race, ethnicity, or national origin.

Subdivision (f) provides that P.C. 745 applies to adjudications and dispositions in juvenile court, as well as to cases in criminal courts.

Subdivision (j) specifically provides that P.C. 745 "applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021." Stated another way, P.C. 745 is **not** retroactive and applies only to cases in which judgment is entered on and after January 1, 2021.

Establishing a Violation (Subdivision (a))
Provides that a violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

1. The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin; or

2. During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of his or her race, ethnicity, or national origin, **whether or not purposeful**.

continued

Provides this does not apply if the person speaking is describing language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect; or

3. The defendant was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity or national origin in the county where the convictions were sought or obtained; or

4. (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

   (B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

[Note that there is no requirement that the defendant make any showing of prejudice. That is, the defendant is not required to prove that the alleged bias had any impact whatsoever on the bringing of charges, the trial, the conviction, or sentencing. Bias by an officer involved in the case who had a peripheral role in the investigation and never testified at trial could result in the vacating of convictions in a mass shooting case, despite the fact that dozens of eyewitnesses saw the shootings and the defendant gave a videotaped confession. The consequences of new P.C. 745 could be devastating. Legal experts expect that the lack of a requirement to show prejudice will be challenged as a violation of Article 6, Section 13 of the California Constitution, which provides as follows:

continued

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.]

Where the Motion May Be Filed (Subdivision (b))
Permits a defendant to file a motion in the trial court, or, if judgment has been imposed, a habeas corpus petition may be filed, or a motion to vacate a conviction or sentence may be filed pursuant to P.C. 1473.7.

The Hearing (Subdivisions (c) and (i))
Provides that if a motion is filed in the trial court and the defendant makes a prima facie showing that P.C. 745 has been violated, the trial court must hold a hearing. Provides that at the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. Permits the court to appoint an independent expert.

Provides that the defendant has the burden of proving a violation by a preponderance of the evidence.
Requires the court to make findings on the record.

Subdivision (i) provides that a defendant may share a race, ethnicity, or national origin with more than one group. Permits a defendant to aggregate data among groups to demonstrate a violation of P.C. 745.

[The bill contains no funding for the increased costs to the courts to hold these lengthy hearings or to pay for independent experts, or to hear the appeals that will certainly be brought by every losing party. The bill also contains no funding for prosecutors to prepare for and participate in these hearings.]

Discovery (Subdivision (d))
Permits the defense to file a motion requesting disclosure of all evidence relevant to a potential violation of P.C. 745 in the possession or control of the state. Defines "state" as a district attorney, a city prosecutor, or the Attorney General. Requires that the motion describe the type of records or information

continued

sought. Requires the court to release the records if good cause is shown. Provides that upon a showing of good cause, and if the records are *not* privileged, the court may permit the prosecution to redact information prior to disclosure.

[This appears to be a drafting error. The phrase "if the records are not privileged" was placed into the fourth sentence of subdivision (d) when it should have been placed into the third sentence. The current language mandates the release of records even if privileged. And only if the records are not privileged may the court permit redaction. This is how the third and fourth sentences read:

> Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure.

These sentences should read this way:

> Upon a showing of good cause, *and if the records are not privileged*, the court shall order the records to be released. Upon a showing of good cause, ~~and if the records are not privileged,~~ the court may permit the prosecution to redact information prior to disclosure.

[This is how these sentences read in the version of P.C. 745 that did **not** become operative—Section 3 of the bill.]

[This bill imposes substantial burdens and costs on counties without any funding for the increased workload. The time that it will take for prosecutors to identify, locate, review, and redact the information requested by each defendant will be enormous. These costs and burdens will hit small district attorney offices especially hard. Nothing in the bill indicates how far back prosecutors would have to comb through records—5 years, 10 years, 25 years?]

Remedies (Subdivision (e))
Provides that if a court finds by a preponderance of the evidence that there is a violation of P.C. 745, the court "shall impose a remedy specific to the violation found from the following list:"

1. Before a judgment has been entered, the court may impose any of the following remedies:

continued

a. Declare a mistrial, if requested by the defendant.
b. Discharge the jury panel and impanel a new jury.
c. Dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges, if the court determines that it would be in the interest of justice.

2. After a judgment has been entered:

   a. Vacate the conviction and sentence, find that it is legally invalid, and order new proceedings. If the court finds that the only violation of P.C. 745 is based on paragraph (3) of subdivision (a) (defendant was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins) and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred. Provides that on re-sentencing, the court shall not impose a new sentence greater than that previously imposed.

   b. If the court finds that only the sentence was sought, obtained, or imposed in violation of P.C. 745, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. Provides that on re-sentencing, the court shall not impose a new sentence greater than that previously imposed.

3. Provides that when the court finds a violation of P.C. 745, the defendant shall not be eligible for the death penalty.

4. Provides that the remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

Definitions (Subdivision (h))
Provides definitions of "more frequently sought or obtained," "more frequently imposed," "prima facie showing," "racially discriminatory language," and "state."

1. "More frequently sought or obtained" or "more frequently imposed" means that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences

continued

comparing individuals who have committed similar offenses and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity.

[The bill does not provide any definition of "disparity" or explain how to calculate disparity between groups. If there is a disproportion based on statistics going back 25 years, but no disproportion going back only 10 years, what is the relevant statistic? The bill gives no guidance. No definition of "significant difference" is provided. Is a 5%, 10%, 50%, or 75% differential significant? The bill does not say.]

2. "Prima facie showing" means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of P.C. 745 occurred. A "substantial likelihood" requires more than a mere possibility, but *less* than a standard of more likely than not.

3. "Racially discriminatory language" means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

4. "State" includes the Attorney General, a district attorney, or a city prosecutor.

Subdivision (g) provides that new P.C. 745 does not prevent the prosecution of hate crimes pursuant to P.C. 422.6–422.865.

[AB 2542 contained two versions of P.C. 745–Section 3 and Section 3.5. Uncodified Section 7 of the bill provides that Section 3.5 shall only become operative if Assembly Bill 3070 is enacted and becomes effective on or before January 1, 2021. AB 3070 is indeed effective on January 1, 2021, even though its provisions do not apply (i.e., are not operative) until January 1, 2022. California Constitution Article 4, Section 8(c)(1) provides that a statute enacted at a regular session shall go into effect on January 1st next, following a

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90-day period from the date of the enactment of the statute. The California Supreme Court recognizes that there is a difference between the effective date of a statute and the operative date of a statute. In *People v. Alford* (2007) 42 Cal.4th 749, 753, fn 2, the court cites other cases in finding that the effective date of a statute is the date upon which the statute came into being as an existing law and that the operative date is the date upon which the directives of a statute may be actually implemented. Although the effective and operative dates are often the same, the Legislature may postpone the operation of certain statutes until a later time. This writer contacted editors at both Thomson Reuters and LexisNexis, and both say that Section 3.5 is operative, not Section 3.]

[AB 2542 also amends P.C. 1473 and P.C. 1473.7 to add cross-references to P.C. 745. See below.]

P.C. 803
(Amended)
(Ch. 244) (AB 2014)
(Effective 1/1/2021)

Adds a new subdivision (n) to extend the statute of limitations for the P.C. 367g crime of unlawfully using or implanting sperm, ova, or embryos. P.C. 367g is a felony/misdemeanor crime (a "wobbler").

New subdivision (n) provides that notwithstanding any other limitation of time, a violation of P.C. 367g may be filed within one year of the discovery of the offense or within one year after the offense could have reasonably been discovered.

Provides that new subdivision (n) applies to crimes committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, had not run as of January 1, 2021.

P.C. 830.2
(Amended)
(Ch 14) (AB 82)
(Effective 6/29/2020)

Adds the following to the list of persons who are peace officers and whose authority extends to any place in California: persons employed by the Bureau of Cannabis Control for the enforcement of Division 10 of the Business & Professions Code (Cannabis: B&P 26000–26250) and designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers is the enforcement of the laws as set forth in B&P 26015 (i.e., the enforcement of cannabis laws).

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Uncodified Section 15 of this bill sets forth the Legislature's declaration that the amendment to P.C. 830.2 implements the Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64, November 2016) and is consistent with and furthers the intent of the Act. (Proposition 64 permits amending some of its provisions by a majority vote of the Legislature and other provisions by a two-thirds vote, if the amendment is consistent with and furthers the intent of the Act. This bill received more than a two-thirds vote in both the Senate and the Assembly.)

P.C. 830.5
(Repealed & Added)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Repeals the version of P.C. 830.5 that became effective on July 1, 2020, and adds back the *same* version that was in effective until July 1, 2020. (P.C. 830.5 specifies various parole agents, probation officers, and correctional officers who are peace officers and may carry a firearm if authorized by their employing agencies.)

The version that is effective on September 30, 2020 (the same version that was in effect until July 1, 2020) retains references to the Division of Juvenile Justice, the Juvenile Parole Board, and the Division of Juvenile Parole Operations. (These references had been eliminated in the version of P.C. 830.5 that was in effect from July 1, 2020 – September 29, 2020.)

P.C. 830.53
(Repealed)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Repeals this section that became effective on July 1, 2020 and which provided that correctional officers employed by the Dep't of Youth and Community Restoration are peace officers.

[SB 823 is a lengthy bill that, among other things, repeals provisions that would have created the Dep't of Youth and Community Restoration (DYCR) and would have vested DYCR with the powers, responsibilities, and jurisdiction of the Division of Juvenile Justice.]

P.C. 851.93
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Delays the implementation of arrest record relief from January 1, 2021 to July 1, 2022, and continues to make its provisions subject to an appropriation in the annual Budget Act. P.C. 851.93 requires DOJ, on a monthly basis, to review records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, identify persons with records of arrest who are eligible for "arrest record relief." Requires DOJ to grant arrest record relief "if the relevant information is present in the department's electronic records." Relief is granted by DOJ without a court hearing, with no input from the prosecution or a probation department, and without requiring a petition or motion by the arrestee.

P.C. 977.2
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Expands remote court appearances by inmates incarcerated in state prison by adding motions to suppress and sentencings to the types of hearings that may be conducted by two-way electronic audiovideo communication between the defendant and a courtroom in lieu of the physical presence of the defendant in the courtroom, when a state prison inmate has felony or misdemeanor charges pending in a particular county. Also authorizes preliminary hearings and trials to be held by two-way electronic audiovideo communication *if the defendant agrees*. Continues to provide that a court has the authority to order a state prison inmate to be physically present in the courtroom.

P.C. 987
P.C. 987.2
(Repealed & Added)
P.C. 987.4
P.C. 987.5
P.C. 987.8
P.C. 987.81
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals public defender and appointed counsel fees by eliminating four code sections (P.C. 987.4, 987.5, 987.8, and 987.81) that had permitted a court to assess fees against a defendant or minor in a criminal proceeding who was represented by a public defender or assigned/appointed counsel. Beginning July 1, 2021, no attorney fees may be assessed. Pursuant to new P.C. 1465.9, any debt still owed for attorney fees will be canceled.

Amends P.C. 987 and P.C. 987.2 to eliminate cross-references to repealed P.C. 987.8, which permitted the court to impose a lien on real property owned by a defendant and/or to order a defendant to pay all or a portion of the costs of a public defender or appointed private counsel.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021, including public defender and appointed

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attorney fees. Other fees eliminated include city and county jail booking fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving defense attorney fees by providing that beginning July 1, 2021, the balance of any court-imposed costs pursuant to P.C. 987.4 (public defender/assigned counsel fees for representing a minor in a criminal case), P.C. 987.5(a) (registration fee of up to $50 when a defendant is represented by appointed counsel), or P.C. 987.8 (public defender/appointed counsel fees for representing a defendant in a criminal case) is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1000.3
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes the last sentence of subdivision (e) in order to eliminate a defendant having to pay the cost of a drug diversion program **investigation** or a drug diversion **progress report**. Beginning July 1, 2021, these drug diversion costs can no longer be assessed.

P.C. 1000.3 continues to cross-reference P.C. 1001.90, which continues to require a diverted defendant to pay a "diversion restitution fee" in the amount of $100 to $1,000. It applies to all of the diversion programs in P.C. 1000–1001.88, except diversion of defendants with cognitive developmental disabilities (P.C. 1001.20–1001.34).

AB 1869 eliminates numerous administrative fees, effective July 1, 2021, including drug diversion investigation fees and

continued

drug diversion progress report fees. Other fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1001.20
P.C. 1001.21
P.C. 1001.22
P.C. 1001.23
P.C. 1001.29
(Amended)
(Ch. 11) (AB 79)
(Effective 1/1/2021)

Expands this existing misdemeanor pre-trial diversion program for defendants with cognitive developmental disabilities to defendants charged with felony crimes. Deletes the word "cognitive" from the program so that it applies to felony or misdemeanor defendants with a "developmental disability."

Provides for only a few disqualifiers. The felony crimes for which a defendant is **not** eligible for this diversion program are the same as those disqualifiers for mental disorder diversion pursuant to P.C. 1001.36:

1. Murder.
2. Voluntary manslaughter.
3. An offense, conviction of which would require P.C. 290 sex offender registration, except P.C. 314 (indecent exposure).
4. Rape.
5. Lewd or lascivious act on a child under age 14.
6. Assault with intent to commit rape, sodomy, or oral copulation in violation of P.C. 220.
7. Rape or sexual penetration in concert in violation of P.C. 264.1.
8. Continuous sexual abuse of a child in violation of P.C. 288.5.
9. A violation of P.C. 11418(b) or (c) (using or employing a weapon of mass destruction).

continued

There are no disqualifying misdemeanor crimes.

Retains the existing two-year disqualifier by continuing to provide that diversion shall not be ordered when the defendant has previously been diverted under this chapter "within two years prior to the present criminal proceedings."

Continues to provide that diversion may occur at any stage of the criminal proceedings and that the court need only "consult" with the prosecutor, the defense attorney, the probation department, and the appropriate regional center in order to determine whether a defendant may be diverted.

Eliminates the word "cognitive" and provides that this diversion program applies to persons with a "developmental disability." Previously, "cognitive developmental disability" meant an intellectual disability, or autism, or a disabling condition closely related to intellectual disability or autism. Defines "developmental disability" as a disability defined in W&I 4512(a) and for which a regional center finds eligibility for services under the Lanterman Developmental Disabilities Services Act. W&I C. 4512(a) defines "developmental disability" as a "disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature."

Retains the requirement that the prosecutor, the probation department, and the regional center all prepare reports on specified aspects of the defendant's case.

Adds additional considerations for the court in deciding whether, if diversion is granted, it should be under either dual agency supervision (the regional center and the probation department) or single agency supervision (the regional center). In addition to the prosecutor, probation department, and regional center reports, the court is required to consider the defendant's violence and criminal history, the

continued

relationship of the developmental disability to the charged offense, the current charged offense, and whether the defendant will pose an unreasonable risk of danger to public safety as defined in P.C. 1170.18 if treated in the community.

Retains the requirement that a defendant waive speedy trial rights in order to accept diversion and retains the maximum length of diversion at two years.

Expands the list of reasons for which a court may terminate diversion and reinstitute criminal proceedings beyond the divertee's performance being unsatisfactory or the divertee being charged with a felony committed during diversion, to include being charged with a misdemeanor crime committed during diversion that reflects the defendant's propensity for violence, or engaging in criminal conduct rendering the defendant unsuitable for diversion.

P.C. 1001.95
P.C. 1001.96
P.C. 1001.97
(New)
(Ch. 334) (AB 3234)
(Effective 1/1/2021)

Creates new Chapter 2.96 in Title 6 of Part 2 of the Penal Code, entitled "Court Initiated Misdemeanor Diversion."

Authorizes a judge to use his or her discretion to offer diversion to a misdemeanor defendant, over the objection of the prosecution. (Unlike P.C. 1001.36 (mental disorder diversion), there is no language requiring the court to even consider the positions of the prosecution or the defense.)

Criteria and Guidelines for Granting Diversion
Sets forth **no** criteria or guidelines that the court must consider in deciding whether to grant or deny diversion.

Length of the Diversion Period
Limits the diversion period to no more than 24 months, but provides no minimum diversion period. The diversion period can be as short as the court wants it to be.

Number of Times a Defendant May Be Diverted
Provides for no limit on how many times a defendant can be granted this type of misdemeanor diversion.

Excluded Misdemeanor Crimes
Provides that a defendant cannot be diverted if currently charged with any of the following crimes:

1. Any offense that requires registration as a sex offender pursuant to P.C. 290;

continued

2. A violation of P.C. 273.5 (domestic violence: corporal injury resulting in a traumatic condition);
3. A violation of P.C. 243(e) (domestic violence battery); or
4. A violation of P.C. 646.9 (stalking).

All other misdemeanor defendants are eligible for diversion, including defendants charged with repeat or first-time drunk driving, drunk driving causing injury, vehicular manslaughter, elder abuse, elder fraud, vehicle theft, identity theft, firearms offenses, burglary, assault with a deadly weapon, battery on a peace officer, restraining order violations, child endangerment, and every other misdemeanor crime not specified in the short list of exclusions. Defendants who are diverted on "priorable" offenses, such as driving under the influence, will reap a huge benefit from not being treated as a repeat offender should they re-offend after diversion. Defendants who are diverted on misdemeanor crimes for which a conviction would prohibit them from possessing a firearm for 10 years (P.C. 29805) will escape the firearms prohibition.

[*Note:* Existing V.C. 23640 prohibits the suspending or staying of proceedings in V.C. 23152 and 23153 cases. In *Tellez v. Superior Court (Riverside County)* (2020) 56 Cal.App.5th 439 (rehearing denied 11/12/2020), the court looked at legislative history to hold that V.C. 23640 is an exception to mental health diversion (P.C. 1001.36), even though DUI offenses are not specifically listed as exceptions in P.C. 1001.36. The *Tellez* court found that it was not necessary to list V.C. 23152 and V.C. 23153 as exclusions in P.C. 1001.36 because DUI offenders were already excluded by V.C. 23640. *Tellez* briefly mentions this new misdemeanor diversion bill (AB 3234) at the end of the opinion, recognizing that DUI offenses are not listed as excluded crimes and stating that "We do not believe it is clear whether DUI offenses are eligible for the new misdemeanor diversion program and we need not decide that issue." The court then mentions two misdemeanor diversion programs enacted in 1982 that expressly excluded DUI offenses from eligibility and says "In view of that history, the Legislature's failure to expressly exclude DUI offenses this time around is a good indicator that it intended DUI offenses to be eligible for the new misdemeanor program."]

[In his signing message, the Governor wrote that he is concerned that driving under the influence is not excluded

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from diversion. Rather than vetoing the bill to immediately solve this problem, he promised to "seek to expeditiously remedy this issue with the Legislature in the next legislative session [2021]."]

The Diversion Program
Authorizes the court to order a diverted defendant to comply with terms, conditions, or programs that the judge deems appropriate based on "the defendant's specific situation."

Requires a defendant to complete all of the following in order to have his or her case dismissed:

1. Complete all conditions ordered by the court;

2. Make full restitution. (But provides that a defendant's inability to pay restitution due to indigence shall not be grounds for either the denial of diversion or a finding that the defendant has failed to comply with the terms of diversion); and

3. Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

Successful Completion of Diversion
Upon successful completion of diversion, the court must dismiss the case against the defendant and the arrest shall be deemed to have never occurred. Permits the defendant to indicate in response to any question about a criminal record that he or she has not been arrested, except on a questionnaire or application to be a peace officer. Prohibits the record of an arrest that results in successful completion of diversion from being used to deny employment, a benefit, a license, or a certificate.

Non-Compliance with Diversion
Provides that if it appears to the court that the defendant is not complying with the terms and conditions of diversion, the court shall notice the defendant and hold a hearing to determine if criminal proceedings should be reinstated. Even if the court finds that the defendant has not complied with the terms and conditions of diversion, the court is not required to terminate diversion. Instead, "the court **may** end the diversion and order resumption of the criminal proceedings." (Emphasis added.)

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Retroactivity
Nothing in the bill mentions whether it is prospective or retroactive in application. New P.C. 1001.95–1001.97 will definitely apply to every case pending on January 1, 2021, and to every qualifying misdemeanor committed on and after January 1, 2021. If these new statutes are treated the same as P.C. 1001.36 (pre-trial mental disorder diversion), then this new misdemeanor diversion program will also apply to every case not yet final on appeal as of January 1, 2021. See *People v. Frahs* (2020) 9 Cal.5th 618, holding that P.C.1001.36 applies retroactively to all cases not yet final on appeal. In *Frahs,* the court found that P.C. 1001.36 offers a possible ameliorative benefit to a class of criminal defendants, that the statute does not contain an express savings clause that limits mental disorder diversion to prospective-only application, and that the Legislature did not signal any intent to overcome the *Estrada* inference of retroactivity. (*In re Estrada* (1965) 63 Cal.2d 740 held that an amended statute lessening punishment for a crime is presumptively retroactive and applies to all defendants whose judgments were not yet final when the statute took effect.) It appears likely that new P.C. 1001.95–1001.97 will be found to be retroactive.

P.C. 1170
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Release of Terminally Ill State Prison Inmates
Amends subdivision (e) to expand the re-sentencing provisions for terminally ill state prison inmates, to apply to inmates who are determined by a physician to have 12 months to live. Previously, a terminally ill state prisoner could be re-sentenced only if he or she had six months to live. Retains, as is, the re-sentencing provisions for a permanently medically incapacitated inmate who needs 24-hour care.

P.C. 1170(h) Realignment Jail Sentences
Adds paragraph (9) to subdivision (h) to prohibit a state prison sentence when the underlying offense is a P.C. 1170(h) Realignment county jail offense, even when the defendant is convicted of an enhancement that is punishable by imprisonment in the state prison. The purpose of new paragraph (9) is to abrogate the decision in *People v. Vega* (2014) 222 Cal.App.4th 1374. In *Vega*, the defendant was convicted of H&S 11379.6 (manufacturing a controlled substance, which is a P.C. 1170(h) crime) and H&S 11379.7(a) (a two-year state prison enhancement for a child under

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age 16 being present.) The trial court initially sentenced the defendant to five years in state prison: three years for manufacturing plus two years for the enhancement. Later, after CDCR questioned the sentence, the trial court modified the sentence to three years in county jail and did not impose the enhancement. The appellate court reversed the modified sentence, holding that where an enhancement provides for a state prison term, the entire term is to be served in state prison, even if the underlying crime is an P.C. 1170(h) crime.

Here is the exact language of P.C. 1170(h)(9):

> Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in *People v. Vega* (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

New P.C. 1170(h)(9) is limited in scope and should not prevail over 1170(h)(3), which specifies detailed *exceptions* to 1170(h) county jail sentences. Pursuant to existing 1170(h)(3), a sentence must be to state prison and not to county jail if a defendant has a current or prior conviction for a serious felony (P.C. 1192.7(c)), or has a current or prior conviction for a violent felony (P.C. 667.5(c)), or is required to register as a sex offender pursuant to P.C. 290, or is convicted of a P.C. 186.11 aggravated white collar crime enhancement and sentence is imposed on that enhancement. P.C. 1170(h)(9) should *not* apply in any cases where the P.C. 1170(h)(3) exceptions apply. Thus, a charge of P.C. 236–237 (false imprisonment, which is a P.C. 1170(h) crime) with a P.C. 12022.5 state prison firearm use enhancement is punishable by imprisonment in the state prison because P.C. 1170(h)(3) applies: the crime is a violent felony and thus an exception to P.C. 1170(h) county jail sentencing.

P.C. 1170(h)(3) Exceptions Prevail Over P.C. 1170(h)(9)
Here are three reasons why the P.C. 1170(h)(3) exceptions are still good law and why they prevail over new P.C. 1170(h)(9):

1. P.C. 1170(h)(9) does **not** say "Notwithstanding any other law…." When the Legislature intends for a statute

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to prevail over any contrary law, it typically signals this intent by using the phrase "notwithstanding any other law" or "notwithstanding other provisions of law." (*In re Greg F.* (2012) 55 Cal.4th 393, 406.) There are numerous instances of the phrase throughout the Penal Code. Not only does P.C. 1170(h)(9) not use either of these phrases, it does not even cross-reference or address P.C. 1170(h)(3).

2. The intent of P.C. 1170(h)(9) limits its reach to **non**-P.C. 1170(h)(3) scenarios. P.C. 1170(h)(9) specifically provides that its intent is to abrogate the holding in *Vega*. *Vega* is a drug case and did not address in any way the enhancements that qualify a crime as a serious or violent felony. It also did not address either of the two other exceptions in P.C. 1170(h)(3)—a defendant who is required to register as a sex offender pursuant to P.C. 290 or a crime for which a P.C. 186.11 enhancement is imposed.

3. Because P.C. 1170(h)(3) is a more specific statute than P.C. 1170(h)(9), and details specific exceptions to P.C. 1170(h) county jail sentences, its provisions prevail over P.C. 1170(h)(9), which is a more general provision.

According to the California Supreme Court in *County of Placer v. Aetna Casualty and Surety Company* (1958) 50 Cal.2d 182, 189:

> It is well settled, also, that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.

P.C. 667/1192.7(c) Serious Felony Allegations
Keep in mind that P.C. 1170(h)(9) refers only to enhancements and does not mention allegations that qualify a felony on its face as a serious felony. Consider filing a P.C. 667/1192.7(c) serious felony allegation along with any applicable enhancement if the underlying offense is a P.C. 1170(h) crime. P.C. 969f permits the charging of P.C. 667/1192.7(c) allegations alleging the personal use of a deadly weapon or firearm, or the personal infliction of great

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bodily injury. These allegations are not enhancements; they simply qualify a current felony as a serious felony on its face. Pursuant to P.C. 1170(h)(3), any serious felony is an exception to P.C. 1170(h) sentencing. An enhancement adds time onto a defendant's sentence. A serious felony qualifying allegation does not. P.C. 1170.1(a) defines the principal term as the greatest term imposed by the court for any of the crimes plus any additional term for an applicable enhancement. Rules of Court, rule 4.405(3) defines "enhancement" as "an additional term of imprisonment added to the base term." Thus, a P.C. 667/1192.7(c) allegation is not an enhancement. It simply operates to qualify the crime as a state prison crime and would not be affected by P.C. 1170(h)(9) since 1170(h)(9) is worded only in terms of enhancements.

Retroactivity
Since new P.C. 1170(h)(9) is not a reduction of punishment (it simply changes where the sentence is served) it may not be retroactive to all cases not yet final on appeal as of August 6, 2020, which is when this amendment was effective. A change in the law that reduces punishment is retroactive and applies to all defendants whose judgments are not yet final. (See *In re Estrada* (1965) 63 Cal.2d 740, 745.) The courts may rule that it applies prospectively only, to crimes committed or on after August 6, 2020. Or the courts may rule it applies retroactively to all cases not yet final on appeal as of August 6, 2020, such that new P.C. 1170(h)(9) would be applied to all pending cases, even if the crime occurred months or years ago. Retroactivity and predictions about how the courts will rule are beyond the scope of this digest. Keep in mind that P.C. 3 provides that no part of the Penal Code is retroactive unless expressly so declared. And in *People v. Brown* (2012) 54 Cal.4th 314, 323–324, the California Supreme Court re-emphasized the default rule that changes in the law are to be applied prospectively, not retroactively.

P.C. 1203
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes the last sentence of subdivision (i) in order to eliminate a probationer having to pay the reasonable costs of processing a request for interstate compact supervision pursuant to P.C. 11175–11179. Beginning July 1, 2021, no interstate compact costs can be assessed, and any debt still owed for these costs will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021, including the costs of processing a

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probationer's request to be supervised in another state. Other fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving interstate compact processing costs by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1203a
(Amended)
(Ch. 328) (AB 1950)
(Effective 1/1/2021)

Limits the maximum period of probation for most misdemeanor crimes to one year. Also eliminates the court's power to impose a probation period that is as long as the defendant's maximum jail term.

(Previously, the default maximum probation period for a misdemeanor crime was three years. And the court had the power to impose a probation period that was as long as the defendant's maximum jail sentence.)

[This bill also amends P.C. 1203.1 to limit to two years the probation period in most felony cases. See P.C. 1203.1, below.]

See P.C. 1203.1, below, for information about retroactivity and some considerations that apply to both P.C. 1203a (probation for misdemeanor crimes) and P.C. 1203.1 (probation for felony crimes)

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Exceptions
Provides that the only exception to the one-year misdemeanor maximum probation period is when the offense "includes specific probation lengths within its provisions." Here are the exceptions this writer is aware of:

1. V.C. 23152 and 23153, Driving Under the Influence and Driving Under the Influence Causing Injury. V.C. 23600 specifies a probation period of three to five years for V.C. 23152 and 23153 crimes, "notwithstanding" the provisions of P.C. 1203a.

2. Domestic-Violence-Related Crimes That Come Within the Provisions of P.C. 1203.097. P.C. 1203.097 requires a minimum probation of 36 months when a person is granted probation for a crime in which the victim is a person defined in Family C. 6211. Section 6211 provides that domestic violence is abuse perpetrated against a spouse, former spouse, cohabitant, former cohabitant, person with whom the defendant is having or has 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. Some misdemeanor crimes specifically cross-reference P.C. 1203.097, such as P.C. 166(c) (see P.C. 166(e)(1)), P.C. 273.5(a) (see P.C. 273.5(g)), P.C. 273.6 (see P.C. 273.6(h)), and P.C. 29825 (purchasing or possessing a firearm when prohibited by a court order). Other crimes may fit within P.C. 1203.097 because the relationship between the defendant and victim brings the case within its provisions. Examples include P.C. 136.1, 368, 422, 594, 647(j)(4), 646.9, and 653m.

3. P.C. 272(a)(1), Contributing to the Delinquency of a Minor. P.C. 272(a)(1) provides for a probation period of up to five years.

4. P.C. 273a, Child Endangerment. P.C. 273a(c) provides for a mandatory minimum period of probation of 48 months.

5. P.C. 273d, Corporal Injury on a Child. P.C. 273d(c) provides for a mandatory minimum probation period of 36 months.

6. P.C. 502(c)(1), (c)(2), (c)(4), (c)(5), Computer Crimes. P.C. 1203.047 requires a minimum probation period of three years, except in an unusual case.

continued

7. P.C. 502.7(b), Making or Selling a Device to Fraudulently Obtain Telephone Services. P.C. 1203.047 requires a minimum probation period of three years, except in an unusual case.

8. P.C. 670 (P.C. 670 is a sentencing statute for a conviction of B&P 7158, 7159, 7161, P.C. 470, 484, 487, or 532 that involves defrauding an owner of a residential or non-residential structure in connection with repairs or improvements to the structure or property for damage or destruction caused by a natural disaster. Among other things, it requires fines to be doubled. P.C. 670(d) provides that the period of probation for a defendant sentenced pursuant to P.C. 670 shall be at least five years or until restitution is made to the victim, whichever first occurs.

9. H&S 11550(a), Using or Being Under the Influence of a Controlled Substance. The last sentence in H&S 11550(a)(1) provides that the court may impose a probation period of up to five years.

10. C.C.P. 1218, Contempt of Court for Failing to Comply With a Court Order Pursuant to the Family Code. Amended C.C.P. 1218 (AB 2338, Chapter 283, effective 1/1/2021) provides that in lieu of ordering jail or community service, the court may grant probation for up to one year upon a first finding of contempt, a period of up to two years upon a second finding of contempt, and a period of up to three years upon a third or subsequent finding of contempt.

See P.C. 1203.1, below, for information about retroactivity and some considerations that apply to both P.C. 1203a (probation for misdemeanor crimes) and P.C. 1203.1 (probation for felony crimes).

P.C. 1203.016
P.C. 1203.018
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes a phrase in each of these electronic home detention sections (PC. 1203.016(b)(4) and P.C. 1203.018(d)(4)) so that the willful failure to pay a provider for electronic home detention services is no longer a basis for taking a monitored offender into custody. Also deletes subdivision (g) in P.C. 1203.016 and subdivision (j) in P.C. 1203.018 in their entirety, which had permitted the charging of a program administrative fee to specified home detention participants.

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(P.C. 1203.016 pertains to home detention for inmates serving their sentences. P.C. 1203.018 pertains to electronic monitoring in lieu of bail.)

Beginning July 1, 2021, no home detention fees can be assessed, and any debt still owed for these fees will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Other fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving court-imposed home detention/electronic monitoring fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1203.1
(Amended)
(Ch. 328) (AB 1950)
(Effective 1/1/2021)

Limits the maximum period of probation for most felony crimes to two years. Also eliminates the court's power to impose a probation period that is as long as the defendant's maximum sentence, except in specified cases.

(Previously, the default maximum probation period for a felony crime was five years. And the court had the power, in any case, to impose a probation period that was as long as the defendant's maximum jail or state prison sentence.)

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[This bill also amends P.C. 1203a to limit to one year the probation period in most misdemeanor cases. See P.C. 1203a, above.]

Exceptions
Provides for a few exceptions to the two-year limit on felony probation periods:

1. Any offense listed in P.C. 667.5(c) (violent felonies).

2. An offense that "includes specific probation lengths within its provisions."

   Here are the exceptions this writer is aware of:

   a. V.C. 23152 driving under the influence and V.C. 23153 driving under the influence and causing injury. V.C. 23600 specifies a probation period of between three and five years.

   b. Domestic-Violence-Related Crimes That Come Within the Provisions of P.C. 1203.097. P.C. 1203.097 requires a minimum probation of 36 months when a person is granted probation for a crime in which the victim is a person defined in Family C. 6211. Section 6211 provides that domestic violence is abuse perpetrated against a spouse, former spouse, cohabitant, former cohabitant, person with whom the defendant is having or has 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. Some felony crimes specifically cross-reference P.C. 1203.097, such as P.C. 273.5(a) (see P.C. 273.5(g)), P.C. 273.6(e) (see P.C. 273.6(h)), and P.C. 29825 (purchasing or possessing a firearm when prohibited by a court order). Other crimes may fit within P.C. 1203.097 because the relationship between the defendant and victim brings the case within its provisions. Examples include P.C. 136.1, 368, 422, 594, and 646.9.

   c. P.C. 273a Child Endangerment. P.C. 273a(c) provides for a mandatory minimum period of probation of 48 months.

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e. P.C. 502(c)(1), (c)(2), (c)(4), (c)(5), Computer Crimes. P.C. 1203.047 requires a minimum probation period of three years, except in an unusual case.

f. P.C. 502(c)(3), (c)(6), (c)(7), (c)(8), Computer Crimes. P.C. 1203.047 requires a minimum probation period of three years, except in an unusual case.

g. P.C. 502.7(b), Making or Selling a Device to Fraudulently Obtain Telephone Services. P.C. 1203.047 requires a minimum probation period of three years, except in an unusual case.

h. P.C. 670 (P.C. 670 is a sentencing statute for a conviction of B&P 7158, 7159, 7161, P.C. 470, 484, 487, or 532 that involves defrauding an owner of a residential or nonresidential structure in connection with repairs or improvements to the structure or property for damage or destruction caused by a natural disaster. Among other things, it requires fines to be doubled.) P.C. 670(d) provides that the period of probation for a defendant sentenced pursuant to P.C. 670 shall be at least five years or until restitution is made to the victim, whichever first occurs.

3. P.C. 487(b)(3) (grand theft where the money, labor, or property is taken by an employee, servant, or agent and is $950 or more in a 12-month period), but **only** if the total value of the property taken is more than $25,000.

4. P.C. 503 (various embezzlement crimes), but **only** if the total value of the property taken is more than $25,000.

5. P.C. 532a (false financial statements), but **only** if the total value of the property taken is more than $25,000.

Maximum Probation Period for the Exceptions
For the first two exceptions above (a P.C. 667.5(c) violent felony, or an offense that includes a specific probation length within its provisions), the probation length can be as long as the maximum sentence in the case. For example, a defendant convicted of a violation of P.C. 245(a)(1) with a P.C. 12022.7(a) GBI enhancement (which is a violent felony), may be placed on probation for seven years because the defendant's maximum sentence is seven years (four for P.C. 245(a)(1) and three for 12022.7(a)).

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However, tying the maximum probation period to the maximum sentence will, in DUI cases at least, mean that the maximum probation period is **less than** the probation period permitted in the specific probation length provision that applies to that crime. For example, V.C. 23600 provides for a probation period of three to five years for a conviction of driving under the influence (V.C. 23152 or 23153), but the maximum sentence in a one count felony V.C. 23152 or 23153 case is three years. So it appears the maximum probation period would be three years. This produces an odd result with DUI felony probation being limited to three years pursuant to P.C. 1203.1 and DUI misdemeanor probation being limited to five years pursuant to P.C. 1203a.

For the last three exceptions (P.C. 487(b)(3), 503, and 532a where the value of the property taken is more than $25,000), the maximum probation period is three years.

A Few Considerations

1. Shortened probation periods hurt crime victims, especially those who are owed restitution or who have stay-away or no contact orders issued as a condition of probation. It is important to get restitution ordered as quickly as possible rather than have restitution hearings repeatedly continued because the defense claims it is not ready. In appropriate cases, consider delaying sentencing so that a defendant can make full or partial restitution before sentencing, or so that the restitution amount can be finalized and ordered at sentencing.

2. Shortened probation periods mean that many defendants will not have enough time to complete court-ordered treatment or counseling programs within the probation period, especially if the defendant will be in custody finishing up a jail sentence until after the sentencing date. (Since a probation period begins running when a defendant is sentenced, many defendants may serve a significant portion of the probation period in jail.) In appropriate cases, sentencing could be delayed so that a defendant can start a program before the probation period begins to run, if the defendant is out of custody, or so that the defendant can start the program soon after sentencing, if the defendant is in custody.

3. P.C. 1203.2(e), which authorizes the court to impose a new period of probation, has **not** been amended or eliminated, and is still in effect.

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4. A defendant can probably waive the provisions of P.C. 1203a or 1203.1 and agree to have a longer period of probation imposed at initial sentencing, or, a defendant could agree to a later extension of probation past the maximum date. In *People v. Jackson* (2005) 134 Cal.App.4th 929, 932–933, the appellate court found that the defendant was estopped from challenging a court order that extended her probation period beyond the statutory maximum, which was an excess of jurisdiction, because the defendant asked for the extension. As long as a court has subject matter or fundamental jurisdiction (which the court would have, both at initial sentencing and while the defendant is on probation), a party consenting to an action beyond the court's jurisdiction (i.e., an action that is in excess of jurisdiction), is estopped from complaining. See *People v. Ford* (2015) 61 Cal.4th 282. In *Ford*, the defendant agreed to the continuance of a restitution hearing to a date after probation expired and the California Supreme Court ruled that his consent to the continued exercise of jurisdiction estopped him from challenging the court's restitution order.

Retroactivity of P.C. 1203.1 and P.C. 1203a
Nothing in AB 1950 mentions whether the amendments to P.C. 1203a or 1203.1 are prospective or retroactive in application. The general default rule is that a change in a criminal law applies prospectively unless the law expressly declares that it applies retroactively. (P.C. 3; and *People v. Brown* (2012) 54 Cal.4th 314, 319.). The exception to the default rule is that when a new law mitigates punishment, it will be presumed to apply to convictions that are not yet final unless the Legislature expresses a contrary intent. (*In re Estrada* (1965) 63 Cal.2d 740, 745.)

The new probation limits will definitely apply prospectively to every pending case on January 1, 2021, even if the crime occurred before 2021. This would include defendants picked up on arrest warrants or bench warrants in 2021 for crimes committed before 2021. Any defendant sentenced on and after January 1, 2021, will be able to take advantage of the new probation period limits.

Whether the new rules apply retroactively will be the subject of litigation. On and after January 1, 2021, will defendants who were sentenced before 2021 and are on probation be able to get probation immediately terminated based on AB 1950, if they have already been on probation for a time period that exceeds the new probation period limits, even

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if they never appealed their convictions and even if the appellate period has passed? Will the probation period be able to be extended to the maximum length according to the pre-2021 laws if a defendant was placed on probation before 2021?

The answer depends on whether the defendant's conviction is final and on whether the change in the law is deemed a lessening of punishment and/or an ameliorative benefit. It also depends on whether there was a plea agreement for a specific period of probation or an agreement prohibiting early termination of probation.

Even if a judge rules that probation termination is not required by AB 1950, the judge can still terminate probation pursuant to existing P.C. 1203.3, unless there was a plea agreement specifying the probation length or prohibiting early termination. P.C. 1203.3(a) permits probation termination "at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it." P.C. 1203.3(b)(2)(B) requires a two-day notice to the prosecutor before probation can be terminated early and the prosecutor is required to provide notice to the victim if the victim has requested to be notified about the progress of the case. A judge can also exercise his or her discretion to decline to extend probation.

In the absence of a savings clause providing only for prospective relief or some other clear intention about retroactivity, a legislature ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, "distinguishing only as necessary between sentences that are final and sentences that are not." (*People v. Buycks* (2018) 5 Cal.5th 857, 881, citing *Estrada, supra,* 63 Cal.2d at 745.)

The first question is whether a reduction in the possible maximum probation period is a lessening of punishment or an ameliorative benefit. Probation is not punishment, so a reduction in the probation period cannot be a lessening of punishment. (Probation is not punishment; it is an act of grace and clemency in lieu of punishment; it is a privilege, not a right. (*People v. Moran* (2016) 1 Cal.5th 398, 402 (citing a number of cases).) But a defendant being on probation subjects the defendant to additional punishment for the crime he or she is on probation for, if probation is violated. The defendant is, of course, in complete control over whether

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he or she violates probation. A court might find that getting off of probation is the kind of ameliorative change in the law that would apply retroactively.

If the reduction in the possible maximum probation period is deemed an ameliorative benefit, the second question is whether a particular defendant's conviction is already final such that the ameliorative change would not apply. Based on *People v. Chavez* (2018) 4 Cal.5th 771, *People v. McKenzie* (2020) 9 Cal.5th 40, and *People v. Lopez* (11/13/2020) 6 DCA #H046618, a court could rule that the conviction of a defendant who is currently on probation and whose case is past the time for filing an appeal, is *not* a final conviction and therefore an ameliorative benefit would apply to that defendant.

In *McKenzie*, the court ruled that a defendant who was placed on probation and never appealed that conviction could take advantage of an ameliorative amendment (the elimination of three-year H&S 11370.2 drug priors) that took effect while the defendant was appealing a later sentence to state prison for probation violation. The prosecution argued that because the defendant never filed an appeal within 60 days of the initial grant of probation, that his conviction was already final on appeal, and he could not take advantage of the elimination of three-year drug priors when he later appealed his state prison sentence for probation violation. The *McKenzie* court found that the defendant was not precluded from getting the benefit of the change in the law. In *Chavez*, the court found that it was not proper to dismiss a conviction pursuant to P.C. 1385 after probation expired. When a court places a defendant on probation by suspending the imposition of sentence or by suspending the execution of sentence, the result is not a final judgment. In the case of a successful probationer, final judgment is never pronounced. (*Chavez, supra,* 4 Cal.5th at 777 and 781.)

In *Lopez*, the court found that a defendant facing a mandatory supervision violation was entitled to benefit from the change in the law to H&S 11352 requiring that the transportation of a controlled substance be for the purpose of sale and not for personal use. The court found that being on mandatory supervision was not a final judgment, in that sentencing was not complete.

P.C. 1203.1b
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals this section that had permitted the court, after determining a defendant's ability to pay, to require a defendant to pay all or a portion of the reasonable cost of probation supervision, of mandatory supervision, of conducting a pre-sentence investigation and preparing a pre-sentence report, of conducting a pre-plea investigation and preparing a pre-plea report, of processing a jurisdictional transfer request pursuant to P.C. 1203.9, or of processing a request for interstate compact supervision pursuant to P.C. 11175–11179. Beginning July 1, 2021, a defendant can no longer be charged these fees, and any debt still owed for these fees will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Other fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, county parole supervision fees, mandatory supervision fees, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 1203.1b fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1203.1bb
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, amends this section to delete a cross-reference to P.C. 1203.1b, which is repealed as of July 1, 2021. (P.C. 1203.1b had permitted the court to charge a defendant for the reasonable cost of probation supervision and several other types of fees. For more information on P.C. 1203.1b, see above.)

continued

P.C. 1203.1bb continues to provide that if a defendant is granted probation and is ordered to install an ignition interlock device, the defendant is required to pay the manufacturer directly for the cost of purchasing and installing the device, in accordance with the payment schedule ordered by the court.

P.C. 1203.1d
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes phrases pertaining to a defendant paying money as reimbursement for legal assistance provided by the court and to a defendant paying the cost of probation or probation investigation, because other provisions of this bill eliminate these fees. Both P.C. 987.8 (which permits a defendant to be charged for a public defender or appointed attorney services) and P.C. 1203.1b (which permits a defendant to be charged for, among other things, the reasonable cost of probation supervision and pre-sentence investigation fees) are repealed as of July 1, 2021. See P.C. 987.8 and 1203.1b, above, for more information.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1203.1e
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals this section in its entirety in order to eliminate the court's authority to order a defendant to pay all or a portion of the reasonable cost of county parole supervision (i.e., supervision after release from county jail or a local detention facility). Beginning July 1, 2021, no P.C. 1203.1e costs can be assessed, and any debt still owed for county parole fees will be canceled.

continued

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 1203.1e fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1203.4b
(New)
(Ch. 60) (AB 2147)
(Effective 1/1/2021)

Permits specified former inmates who successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member or successfully participated as a member of a county incarcerated individual hand crew, to petition to have their convictions dismissed (referred to by many as expungement relief), as soon as they are out of custody, and even if they have not finished their period of parole, probation, or supervised release. Defines "successful participation" as the adequate performance of duties without any conduct that warranted removal from the program. (It does not appear that successful participation requires that the former inmate actually helped fight fires or did anything beyond training.)

The purpose of the bill is to help inmates who participated in firefighting training while incarcerated to have a better chance at employment.

continued

Disqualifiers
An offender convicted of any of the following offenses is *not* eligible for relief: murder; kidnapping; arson; forcible rape pursuant to P.C. 261(a)(2), 261(a)(6), 262(a)(1), or 262(a)(4); lewd acts on a child as defined in P.C. 288; any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration pursuant to P.C. 290; or escape from a secure perimeter within the previous 10 years.

Offenders convicted of any other serious felonies (P.C. 1192.7(c)) or violent felonies (P.C. 667.5(c)) **are** eligible for relief.

It appears that if an offender has been convicted **at any time** of any disqualifying offense, he or she is not eligible for relief, because the language provides that "incarcerated individuals who have been convicted of any of the following crimes are automatically ineligible for relief." Thus, a defendant who, for example, has a prior conviction for P.C. 261(a)(2) and is currently serving a sentence for P.C. 211 robbery should not be eligible for relief on the robbery or any other offense he or she is serving time on while participating in a fire program.

Provides that an offender who has any current, pending charges is not eligible for relief.

Procedures for Filing a Petition for Dismissal
Requires that a defendant file the petition for relief in the county where the defendant was sentenced and requires that the prosecuting attorney be given 15 days' notice. Provides that if the prosecutor fails to appear and object to a dismissal petition, he or she may not move to set aside or otherwise appeal the granting of the petition. Permits a defendant to make the application and change of plea in person or by an attorney.

Requires the court to provide a copy of the petition to CDCR if the defendant participated in a California Conservation Camp program, or to the appropriate county authority if the defendant participated in a county program. If CDCR or the county authority certifies to the court that the defendant successfully participated in the program **and** has been released from custody, the court in its discretion and in the interests of justice may dismiss the conviction(s).

continued

Specifically provides that a defendant need not finish parole, probation, or any period of supervised release in order to be eligible for a dismissal. If a court dismisses a conviction pursuant to this section, it is also required to order early termination of parole, probation, or supervised release if the court determines that the defendant has not violated any terms or conditions of release prior to, or during the pendency of, the petition for relief. (Although not addressed in the bill, it would seem reasonable that if a defendant **did** violate any terms of release such that the court could not terminate supervision, the court would also not be able to grant dismissal relief. If a defendant is still being supervised, the conviction for which he or she is being supervised obviously cannot be dismissed.)

The Granting of Relief Is Discretionary, Not Mandatory
Even if a defendant meets the requirements, the court is not required to grant relief. Subdivision (c)(1) provides that if the requirements are met, the court "in its discretion and in the interest of justice, **may**" dismiss the accusations or information against the defendant. Provides that any denial of relief is without prejudice and does not limit the number of times an offender can request relief. Apparently, an offender may submit unlimited requests for relief.

Dismissal Relief Consequences
If a defendant is eligible for relief, all convictions for which the defendant is serving a sentence at the time the defendant successfully participates in a program, are subject to relief.

Provides that a defendant who is granted relief shall not be required to disclose the conviction on an application for licensure by any state or local agency.

Provides that even if a defendant is granted dismissal relief:

1. The conviction may still be pleaded and proved in a subsequent prosecution.

2. The defendant must disclose the conviction in response to any direct question contained in a questionnaire or application for public office or to be a peace officer, for licensure by the Commission on Teacher Credentialing, or for contracting with the California State Lottery Commission.

continued

3. The defendant is not permitted to own, possess, or have in his or her custody or control any firearm.

4. The defendant is not permitted to hold public office if the conviction would have prohibited him or her from holding such office.

[Hand crews suppress wildfires by constructing fire lines—strips of land cleared of flammable materials such as brush, trees, and grass. According to CDCR's website: CDCR, in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operate 43 conservation camps, commonly known as fire camps, located in 27 counties. All camps are minimum-security facilities and all are staffed with correctional staff. There are approximately 3,100 inmates working at fire camps currently. Approximately 2,200 of those are fire line-qualified inmates. Uncodified Section One of the bill contains the Legislature's findings and declarations, including the fact that several hundred incarcerated individuals helped fight the Pocket, Tubbs, Atlas, and Kincade fires since 2017, and the 2018 Camp Fire in Butte County.]

P.C. 1203.425
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Delays the implementation of conviction record relief from January 1, 2021 to July 1, 2022, and continues to make its provisions subject to an appropriation in the annual Budget Act. P.C. 1203.425 requires DOJ, on a monthly basis, to review records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons who are eligible for "automatic conviction record relief." If found eligible, DOJ then grants relief, including dismissal of the conviction, without a court hearing, with no input from the prosecution or a probation department, and without requiring a petition or motion by the defendant.

P.C. 1203.9
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Beginning July 1, 2021, eliminates a cross-reference to P.C. 1203.1b, which this bill repeals on July 1, 2021. P.C. 1203.1b had permitted the court to order a defendant to pay all or a portion of the costs of a P.C. 1203.9 jurisdictional transfer. (P.C. 1203.9 permits probationers and offenders on mandatory supervision to have their supervision transferred to another county if the offender resides there permanently.)

continued

Beginning July 1, 2021, no P.C. 1203.9 costs can be assessed. Pursuant to new P.C. 1465.9, any jurisdictional costs owed will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 1203.1b fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1208
P.C. 1208.2
P.C. 1208.3
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, eliminates provisions in P.C. 1208.2 that had permitted a county to impose an administrative fee and an application fee for P.C. 1208 work furlough programs, for electronic home detention programs pursuant to P.C. 1203.016 and 1203.018, and for offenders participating in county parole pursuant to P.C. 3074–3089. P.C. 1208.2 is also amended to specifically prohibit the imposition of an administrative fee. P.C. 1208 and 1208.3 are amended to delete cross-references to P.C. 1208.2 fees. Beginning July 1, 2021, offenders participating in these programs cannot be charged a fee, and any debt still owed for such programs will be canceled.

continued

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 1208.2 fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1210.15
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals this section that permitted a chief probation officer to charge a probationer for the costs of a continuous electronic monitoring device to monitor the offender's whereabouts. Beginning July 1, 2021, offenders can no longer be charged these fees, and any debt still owed for such monitoring will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees.

continued

These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 1210.15 fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1320.24
P.C. 1320.26
P.C. 1320.30
P.C. 1320.32
P.C. 1320.33
P.C. 1320.34
(Amended)
(Ch. 36) (AB 3364)
(**Inoperative**)

Since Proposition 25 failed because the voters rejected it on November 3, 2020, the amendments to these sections (which were also in Prop. 25) are not operative. Proposition 25 was a referendum on SB 10 (the 2018 legislation that would have changed California's cash bail system to a risk assessment system). Since voters rejected a risk assessment system, California's current bail statutes (P.C. 1268–1320.6) are **not** repealed and remain in effect.

If Proposition 25 had passed, the amendments to P.C. 1320.32, 1320.33, and 1320.34 would have pushed back by two years, from October 1, 2019 to October 1, 2021, the effective date of the repeal of cash bail and the commencement of pre-trial risk assessment procedures set forth in Chapter 1.5 in Title 10 of Part 2 of the Penal Code (P.C. 1320.7–1320.34).

P.C. 1320.24 would have pushed back by two years, from January 1, 2021 to January 1, 2023, the date by which the Judicial Council must submit a report to the Governor and the Legislature.

P.C. 1320.26 would have pushed back by two years, from February 1, 2019 to February 1, 2021, the deadline by which a county must submit to the Judicial Council a letter confirming its intent to contract for pre-trial assessment services.

continued

P.C. 1320.26 would have extended by two years, from January 1, 2023 to January 1, 2025, the deadline for the City and County of San Francisco to stop contracting with the existing nonprofit entity that is performing pre-trial services there and transition the entity's employees into public employment.

P.C. 1320.35
(Amended)
(Ch. 36) (AB 3364)
(Effective 1/1/2021)

Extends by six months, from January 1, 2021 to July 1, 2021, the date by which any pre-trial risk assessment tool used by a pre-trial services agency must be validated. Continues to provide that thereafter, the tool must be validated at least every three years.

Extends by six months, from December 31, 2020 to June 30, 2021, the date by which the Judicial Council must publish on its Internet website a report with data related to the outcomes and potential biases in pre-trial release.

Extends by six months, from July 1, 2022 to January 1, 2023, the date by which the Judicial Council must provide a report to the courts and the Legislature containing recommendations to mitigate bias and disparate effect in pre-trial decision making.

[*Note:* P.C. 1320.35 was not a part of SB 10, which would have repealed cash bail and substituted a risk assessment system for making pre-trial release decisions. SB 10 was enacted in 2018 by the Legislature, never went into effect, and was rejected by the voters (Proposition 25) on November 3, 2020.]

P.C. 1324.2
(New)
(Ch. 241) (AB 1927)
(Effective 1/1/2021)

Provides use immunity to specified witnesses in sexual assault cases by prohibiting the testimony of a victim or witness about the use or possession of alcohol or a controlled substance from being used against the victim or witness in a separate prosecution for offenses such as illegal drug use or underage drinking, if the testimony is given in a felony prosecution for a violation or attempted violation of P.C. 220 (assault with intent to commit a sex crime or mayhem), P.C. 243.4 (sexual battery), P.C. 261 (rape), P.C. 261.5 (unlawful sexual intercourse), P.C. 286 (sodomy), P.C. 287 (oral copulation), P.C. 288 (lewd act on a child or dependent adult), or P.C. 289 (sexual penetration). Applies to testimony about the use or possession of alcohol or drugs "at or around the time of" the sex crime. Provides that evidence that the

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testifying victim or witness unlawfully possessed or used a controlled substance or alcohol "is not excluded" in the felony sex crime prosecution (and thus could be introduced by the defendant). Also provides that evidence the witness received the use immunity provided in this new section "is not excluded" (and thus could be told to the jury).

The purpose of this automatic use immunity is to eliminate the fear of liability or prosecution for the illegal use or possession of alcohol or drugs that sometimes prevents victims or witnesses from reporting sexual assault crimes and from cooperating with the prosecution.

P.C. 1376
(Amended)
(Ch. 331) (AB 2512)
(Effective 1/1/2021)

Makes several changes to this section, which sets forth the procedures for an intellectual disability hearing that a defendant is permitted to seek in order to preclude the death penalty from being sought against him or her.

This bill changes the definition of "intellectual disability," makes it easier for a defendant to obtain a pre-trial hearing on the issue, and authorizes a defendant to raise the issue of intellectual disability for the first time in a petition for habeas corpus after a judgment of death.

Definition of "Intellectual Disability"
Changes the definition of "intellectual disability" for the purpose of decreasing the number of cases in which the death penalty can legally be sought by prosecutors. The **previous** definition of intellectual disability is a condition of significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18. The **new** definition eliminates the requirement that intellectual disability manifest itself before age 18 and provides instead that sub-average general intellectual functioning and deficits in adaptive behavior manifest "before the end of the developmental period, as defined by clinical standards." However, the bill does not define what age constitutes "the end of the developmental period" and does not provide any guidelines for a how a court would make this determination. [Since P.C. 3051 Youth Offender Parole became effective on January 1, 2014, the age at which an offender could commit crimes and qualify for early parole has changed from under age 18, to 25 years old or younger, based on the claim that a human brain is not fully developed until the mid-20s.]

continued

Prima Facie Showing
Makes it easier for a defendant to get a hearing on intellectual disability by eliminating the requirement that the defendant submit a declaration by a qualified expert stating that the defendant has an intellectual disability, and instead, requiring only a prima facie showing of intellectual disability. Provides that "prima facie showing of intellectual disability" means that the defendant's allegation of intellectual disability is based on "the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled." Thus, a defendant would not have to present any expert evaluation in order to get a hearing.

Post-Death Penalty Hearing
Permits a defendant who has already been sentenced to death, to raise the issue of intellectual disability for the first time in a habeas corpus petition. In order to get a hearing, the defendant needs to make a prima facie showing of intellectual disability, as explained above. For these post-death penalty hearings, some hearsay is admissible. An expert is permitted to testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability, if the expert relied upon these statements as the basis for his or her opinion. This new subdivision says nothing about a jury trial and it appears that a post-conviction hearing would be decided by a judge. [The post-conviction hearing on intellectual disability is a codification of *In re Hawthorne* (2005) 35 Cal.4th 40, which held that intellectual disability can be raised in a habeas corpus petition and that it is a decision for the court and not a jury.]

Adds that the results of a test measuring intellectual functioning shall not be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.

Continues to provide that the burden of proof is on the defendant to prove by a preponderance of the evidence that he or she has an intellectual disability. Continues to provide the option of a pre-trial court hearing on the issue or a jury

continued

trial after the jury has convicted the defendant and found one or more special circumstances true.

[Law enforcement opponents of this bill pointed out that reputable mental health experts and clinicians agree that intellectual disability manifests itself **well before** the age of 18.]

[The U.S. Supreme Court held in *Atkins v. Virginia* (2002) 536 U.S. 304, 122 S.Ct. 2242 that the execution of "mentally retarded" criminals is cruel and unusual punishment prohibited by the Eighth Amendment.]

P.C. 1465.9
(New)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Beginning July 1, 2021, cancels the balance an offender owes for specified administrative fees and costs by providing that the balance of any court-imposed costs "shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated." New P.C. 1465.9 specifies these sections: P.C. 987.4, 987.5(a), 987.8, 1203, 1203.016, 1203.018, 1203.1b, 1203.1e, 1208.2, 1210.15, 3010.8, 4024.2, and 6266.

For more information, see the digest entry for these sections, above and below.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 1473
P.C. 1473.7
(Amended)
(Ch. 317) (AB 2542)
(Effective 1/1/2021)

Amends P.C. 1473 to add a new subdivision (f) permitting a writ of habeas corpus for a judgment entered on or after January 1, 2021, on the grounds that a criminal conviction or sentence was sought, obtained, or imposed in violation of new P.C. 745. New P.C. 745 prohibits the state from seeking or obtaining a criminal conviction, or imposing sentence, on the basis of race, ethnicity, or national origin. For more information about P.C. 745, see above.

Where there is a habeas corpus petition already pending in state court that has not been decided, a defendant is permitted to amend the existing petition to allege a violation of P.C. 745.

Provides that if the defendant makes a prima facie showing of entitlement to relief, the court must issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. Requires the defendant to appear at the hearing by video unless counsel indicates the defendant's presence in court is needed. Requires the court, if it determines that a prima facie showing has *not* been established, to state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis.

Amends P.C. 1473.7 to add a conviction or sentence sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of new P.C. 745 to the list of circumstances permitting a defendant who is no longer in criminal custody to file a motion to vacate a conviction or sentence.

Continues to specify these two other circumstances permitting a motion to vacate conviction or sentence:

1. Prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or

2. Newly discovered evidence of actual innocence.

[AB 2542 is called the "California Racial Justice Act of 2020." It creates new P.C. 745 (see above).]

P.C. 1524
(Amended)
(Ch. 219) (AB 2655)
(Effective 1/1/2021)

Adds another basis for permitting the obtaining of a search warrant to seize evidence tending to show that a misdemeanor crime has occurred or is occurring: a violation of new P.C. 647.9, the new misdemeanor crime of a first responder taking a photograph of a deceased person at the scene of an accident or crime without a law enforcement purpose. This new search warrant ground is in new paragraph (20) of subdivision (a).

This bill creates the new crime, in P.C. 647.9 (see above), of a first responder photographing the image of a deceased person at the scene of an accident or at the scene of a crime for any purpose other than an official law enforcement purpose or a genuine public interest, whether the photo is taken with a personal electronic device or a device belonging to the employing agency. Punishable by a fine of up to $1,000. (*Note*: Despite the crime being labeled a misdemeanor, no jail time is permissible.)

According to the legislative history, this bill is in response to several Los Angeles County Sheriff's deputies taking photos, without an investigative purpose, at the scene of the January 2020 helicopter crash that killed basketball star Kobe Bryant and several other people.

P.C. 1534
(Amended)
(Ch. 63) (AB 904)
(Effective 1/1/2021)

Adds "or software" to the definition of "tracking device" so that a "tracking device" is now defined as any electronic or mechanical device, **or software**, that permits the tracking of the movement of a person or object. Also adds this sentence: "Nothing in this section shall be construed to authorize the use of any device or software for the purpose of tracking the movement of a person or object."

Existing P.C. 1524(a)(12) continues to permit the obtaining of a search warrant for the use of a tracking device to obtain evidence that a felony has been committed, or that a misdemeanor violation of the Fish & Game Code or the Public Resources Code has been committed. Existing P.C. 1534(b) continues to set forth special rules for tracking device search warrants. This bill does **not** change the ability to obtain a search warrant for a tracking device or the rules for how to handle such warrants. P.C. 1534(b) continues to apply to search warrants that permit the installation of a tracking device (and now, the use of tracking software), and to warrants served on a third-party possessor of tracking

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data. The added sentence in P.C. 1534 stating that nothing in this section authorizes the use of any device or software for the purpose of tracking the movement of a person or object, appears unnecessary since P.C. 1534 is not a section that authorizes the obtaining of a tracking device warrant. P.C. 1524 is the authorizing section. The sentence does not in any way affect the ability of law enforcement to obtain a tracking device warrant pursuant to P.C. 1524 and does not change how such warrants are to be handled pursuant to P.C. 1534(b). P.C. 1534 does not authorize the obtaining of any search warrant. It simply specifies how search warrants are handled once they are obtained and sets forth some particular requirements for tracking device search warrants. P.C. 1524 is the section that specifically authorizes the obtaining of various search warrants, including tracking device warrants.

This bill addresses the concern of some that with currently available software, a person's movements can be tracked without having to place an actual device on the person's vehicle. For example, remote access could be gained to someone's computer or cell phone. The purpose of including "software" in the definition of "tracking device," is to require that a search warrant be obtained for the software-based tracking of individuals by law enforcement. In the legislative history, the author of the bill states that "It is … no longer necessary for an officer to make physical contact with a device, person, or vehicle to install a device in order to track an individual. On the contrary, a government official need only have wireless access to download tracking software that will provide investigators with far more information than just a person's or vehicle's location."

P.C. 2605
P.C. 2606
(New)
(Ch. 182) (SB 132)
(Effective 1/1/2021)

The Transgender Respect, Agency, and Dignity Act.

New P.C. 2605 requires CDCR to ask each incoming inmate about gender identity. Each inmate is to be asked about gender identity (female, male, or nonbinary); and whether the person identifies as transgender, nonbinary, or intersex; and which gender pronoun (e.g., "he," she," or "they") or honorific the inmate prefers. Defines "honorific" as a form of respectful address typically combined with an individual's surname.

continued

Provides that staff, contractors, and volunteers at CDCR "shall not consistently fail to use the gender pronoun and honorific an individual has specified in all verbal and written communications" involving the use of a pronoun or honorific.

Permits an inmate, at any time, to inform staff of the inmate's gender identity, and requires staff to promptly offer the inmate an opportunity to specify the gender pronoun and honorific the inmate prefers.

New P.C. 2606 adds several requirements for the treatment of state prison inmates who are transgender, nonbinary, or intersex, regardless of anatomy:

1. Address the inmate in a manner consistent with the inmate's gender identity.

2. If there is a lawful search, the search must be in accordance with the search policy for the inmate's gender identity.

3. House the inmate at a correctional facility designated for men or women based on the individual's preference.

4. Have the inmate's perception of health and safety be given serious consideration in any bed assignment, placement, or programming decision, including granting single-cell status, housing the individual with another incarcerated person of their choice, or removing an individual who poses a threat.

Provides that if CDCR has management or security concerns with an inmate's search or housing preference, CDCR must certify in writing a specific and articulable basis why CDCR is not able to accommodate the search or housing preference.

P.C. 2985
P.C. 2985.1
P.C. 2985.2
P.C. 2985.3
P.C. 2985.4
P.C. 2985.5
(Repealed)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Repeals the Integrated Services for Mentally Ill Parolees program, which was a supportive housing program that provided wraparound services to mentally ill parolees who were at risk of homelessness.

P.C. 3000.01
(New)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Creates new restrictions on the length of parole periods and applies to any person released from state prison onto parole (**not** postrelease community supervision) on or after July 1, 2020. Limits parole periods to two years for offenders who are paroled after serving a determinate sentence. Limits parole periods to three years for offenders who are paroled after serving a life sentence.

Permits discharge from parole for all parolees at the one-year mark. A parolee who was sentenced to a determinate term and who has been on parole for 12 months must be discharged from parole if he or she has no parole violations and is not a mentally disordered offender (P.C. 2962). A parolee who was sentenced to a life term must be referred to the Board of Parole Hearings (BPH) for possible discharge from parole no later than 12 months after release from confinement, but discharge from parole is not required if BPH determines the parolee should be retained on parole. If a life-term parolee is not discharged at the one-year mark, the parolee must be reviewed for possible discharge at the two-year mark.

Provides that time during which parole is suspended because a parolee was returned to custody as a parole violator does *not* count toward the period of parole unless the inmate is found not guilty of the parole violation. (This language is identical in substance to language in existing P.C. 3000(b)(6).) Except for parolees undergoing sexually violent predator proceedings, the absolute maximum parole period for a determinate term parolee is three years from the date of initial parole and for a life term parolee it is four years from the date of initial parole. However, any time during which a parolee is an escapee or fugitive does not count towards the maximum parole period.

New P.C. 3000.01(c)(1) and (c)(2) cross-reference existing P.C. 3064, which provides that after the suspension or revocation of parole, until the parolee is returned to custody, he or she is an escapee and fugitive and no part of the time during which he or she is an escapee and fugitive from justice counts towards the parole period. Thus, neither time spent in custody as a parole violator nor time spent as an escapee/fugitive count towards the parole period.

Exceptions
Restrictions on parole periods in new P.C. 3000.01 do **not** apply to an inmate currently incarcerated for an offense that will require registration as a sex offender, or to an

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inmate whose parole term at the time of the commission of the offense was less than the parole term in new P.C. 3000.01. The parole review periods in new P.C. 3000.01 do not apply to an inmate whose review period at the time of the commission of the offense provides for an earlier review period.

P.C. 3000.02
(New)
(Ch. 325) (AB 1304)
(Effective 1/1/2021)

Creates the California MAT Re-Entry Incentive Program. (MAT = medically assisted therapy).

Authorizes a parole period to be reduced by up to 90 days if a specified parolee participates in substance abuse treatment programs inside and outside of state prison.

Provides for a 30-day reduction to the parole period for every six months of treatment that is **not** ordered by the court, up to a maximum reduction of 90 days, if all of these requirements are met:

1. The offender is released from state prison onto parole (as opposed to being released onto postrelease community supervision); and

2. The offender "has been enrolled in, or successfully participated in, an institutional substance abuse program." [This appears to be a drafting error. It makes no sense that this requirement could be satisfied by merely enrolling in, but not participating in, an in-prison substance abuse program.]; and

3. The parolee successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food & Drug Administration approved medically assisted therapy, and, whenever possible, is provided through a program licensed or certified by the State Dep't of Health Care Services, including federally qualified health centers (FQHSs), community clinics, and Native American Health Centers.

Excludes these parolees from the provisions of the bill:

1. An offender sentenced for an offense specified in P.C. 667.5(c)(3), (4), (5), (6), (11), or (18) (specified sex crimes in the list of violent felonies);

continued

2. An offender convicted of an offense for which he or she received a life sentence pursuant to P.C. 209(b) for kidnapping with the intent to commit a specified sex offense;

3. An offender who received a life sentence pursuant to P.C. 667.51 (15 years to life for a conviction of P.C. 288 or 288.5 with two specified sexual assault prior convictions), a life sentence pursuant to P.C. 667.61 (the one-strike sex offender law), or a life sentence pursuant to P.C. 667.71 (habitual sex offender); or

4. An offender who was convicted of and required to register as a sex offender for a specified sex crime in which one or more of the victims was a child under age 14. Applies to P.C. 261 rape, P.C. 262 spousal rape, P.C. 264.1 sexual assault by voluntarily acting in concert, P.C. 286 sodomy, P.C. 287 or former P.C. 288a oral copulation, P.C. 288(b)(1) forcible lewd or lascivious act, P.C. 288.5 continuous sexual abuse of a child, and P.C. 289 sexual penetration.

Provides that the operation of this new section is contingent upon an appropriation to the State Dep't of Health Care Services of funds received pursuant to a federal Substance Abuse and Mental Health Services Administration (SAMHSA) opioid use disorder or substance use disorder grant.

Requires CDCR to collect data, analyze outcomes, and submit a report.

According to the legislative history of the bill, MAT (medically assisted therapy) is used for treating substance abuse including alcohol abuse and opioid abuse (e.g., heroin, and prescription pain relievers that contain opiates). It uses medication in combination with counseling and behavioral therapies. The medication normalizes brain chemistry, blocks the euphoric effects of alcohol and opioids, relieves physiological cravings, and normalizes body functions without the negative effects of the abused drug.

P.C. 3010.8
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals this section that had permitted CDCR to charge state prison parolees for the cost of a continuous electronic monitoring device to monitor their

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whereabouts. Beginning July 1, 2021, CDCR will not be able to impose any charges for continuous electronic monitoring, and any debt still owed for such monitoring will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 3010.8 fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 3055
(Amended)
(Ch. 334) (AB 3234)
(Effective 1/1/2021)

Expands the Elderly Parole Program by lowering the age, from 60 to 50, at which an inmate is eligible for parole, and by reducing, from 25 to 20, the number of years of incarceration that must be served before parole is granted. Continues to provide that Elderly Parole applies to determinate and indeterminate sentences. Continues to provide that Elderly Parole does **not** apply to an inmate sentenced pursuant to the Strike Law (P.C. 667(b)(i) / P.C. 1170.12), or sentenced to life without the possibility of parole, or sentenced to death, or convicted of the first-degree murder of a peace officer.

continued

Requires the Board of Parole Hearings, by December 31, 2022, to complete all elderly parole hearings for inmates who will be eligible for elderly parole by January 1, 2023.

P.C. 3405
P.C. 3406
(Amended)
P.C. 3408
(New)
P.C. 3409
(Amended)
(Ch. 321) (AB 732)
(Effective 1/1/2021)

Makes several changes to statutes pertaining to menstruating, possibly pregnant, or pregnant state prison inmates.

Adds three restrictions that may not be imposed on an inmate who wants an abortion: imposing gestational limits inconsistent with state law, unreasonably delaying access, and requiring court-ordered transportation (P.C. 3405).

Adds nurse practitioners, certified nurse midwives, and physician assistants to the list of those (physicians and surgeons) who may provide medical and surgical services (P.C. 3406).

New P.C. 3408 requires that every state inmate who is possibly pregnant or capable of becoming pregnant be offered a pregnancy test. Sets forth detailed requirements for pregnant state prison inmates, including offering "unbiased options counseling" about prenatal care, adoption, and abortion; conducting a pregnancy examination; regular prenatal care visits; prenatal vitamins; newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases; assignment of a lower bunk in a multi-tier housing unit; no tasing, pepper spraying, or exposure to other chemical weapons; notice and an application for community-based programs that serve pregnant, birthing, or lactating mothers; referral to a social worker; transportation to and from a hospital outside the prison for the purpose of giving birth, with the transportation done in the least restrictive way possible (i.e., the inmate cannot be shackled to anyone else); having a support person present during the birth and recovery; as much privacy as possible during labor and delivery; and a postpartum examination within one week of the birth with more examinations, as needed, for up to 12 weeks.

Specifically adds sanitary pads and tampons as the kinds of hygiene items that menstruating inmates, or inmates experiencing uterine or vaginal bleeding, must have access to, free of charge (P.C. 3409).

[This bill makes similar changes for incarcerated women in county jails. See P.C. 4023.5–4028, below.]

P.C. 4023.5
P.C. 4023.6
(Amended)
P.C. 4023.8
(New)
P.C. 4028
(Amended)
(Ch. 321) (AB 732)
(Effective 1/1/2021)

Makes several changes to statutes pertaining to the care of menstruating or pregnant county jail inmates.

Specifically adds sanitary pads and tampons as the kinds of hygiene items that menstruating inmates must have access to, free of charge (P.C. 4023.5).

Adds nurse practitioners, certified nurse midwives, and physician assistants to the list of those (physicians and surgeons) who may provide medical and surgical services (P.C. 4023.6).

New P.C. 4023.8 requires that every county jail inmate who is possibly pregnant or capable of becoming pregnant be offered a pregnancy test. Sets forth detailed requirements for pregnant county jail inmates, including offering "unbiased options counseling" about prenatal care, adoption, and abortion; conducting a pregnancy examination; regular prenatal care visits; prenatal vitamins; newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases; assignment of a lower bunk in a multi-tier housing unit; no tasing, pepper spraying, or exposure to other chemical weapons; notice and an application for community-based programs that serve pregnant, birthing, or lactating mothers; referral to a social worker; transportation to and from a hospital outside the jail for the purpose of giving birth, with the transportation done in the least restrictive way possible (i.e., the inmate cannot be shackled to anyone else); having a support person present during the birth and recovery; as much privacy as possible during labor and delivery; and a postpartum examination within one week of the birth with more examinations, as needed, for up to 12 weeks.

Adds three restrictions that may not be imposed on an inmate who wants an abortion: imposing gestational limits inconsistent with state law, unreasonably delaying access, and requiring court-ordered transportation (P.C. 4028).

[This bill makes similar changes for incarcerated women in state prison. See P.C. 3405–3409, above.]

P.C. 4024.2
(Repealed & Added)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, deletes subdivision (e) in order to eliminate the administrative fee that may be charged to an offender participating in a sheriff's work release

continued

program (referred to in some counties as a "weekend work program"). Beginning July 1, 2021, offenders participating in any P.C. 4024.2 program cannot be charged a fee, and any debt still owed for P.C. 4024.2 programs will be canceled.

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 4024.2 fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 4852.03
(Amended)
(Ch. 541) (SB 384)
(2017 Legislation)
(Effective 7/1/2021)

Makes the waiting period for a certificate of rehabilitation the same for all persons convicted of an offense that requires registration as a sex offender: five years' residence in California (already required for all crimes) plus an additional five years. Previously, an additional five years was required for most offenses requiring registration as a sex offender with a few offenses requiring only two additional years (offenses relating to child pornography and P.C. 314 indecent exposure). Now all crimes requiring registration as a sex offender have a 10-year rehabilitation period: five year's residency plus five additional years.

continued

Adds that a certificate of rehabilitation issued on or after July 1, 2021 does not relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under P.C. 290.5.

Until July 1, 2021, P.C. 290.5 provides that the obtaining of a certificate of rehabilitation relieves an offender of the duty to register. Beginning July 1, 2021, P.C. 290.5 eliminates this reference to a certificate of rehabilitation and provides registration termination procedures for the new tiered system of sex offender registration.

[See P.C. 290.5, above, for sex offender registration termination provisions. See P.C. 290 and P.C. 290.008, above, for new provisions relating to tiered sex offender registration.]

P.C. 5058.7
(New)
(Ch. 333) (AB 3043)
(Effective 1/1/2021)

Requires CDCR to approve an attorney's request to have a confidential call with an inmate-client. Requires that the approved confidential call be for at least 30 minutes once per month, unless the inmate or attorney requests less time. The monthly 30-minute phone call is **per case**, so an inmate with two cases would be entitled to two phone calls per month.

Defines "confidential call" as a telephone call between an inmate and his or her attorney, that both the inmate and attorney intend to be private.

The legislative history for this bill states that some state prison facilities prohibit confidential phone calls and require attorneys to use the mail, visit in person, or speak on the phone while being monitored by CDCR staff. Confidential phone calls are the most efficient way for attorneys to communicate with inmates, especially during the COVID-19 pandemic.

P.C. 6266
(Repealed)
(Ch. 92) (AB 1869)
(Effective 7/1/2021)

Effective July 1, 2021, repeals this section that had permitted a state prison inmate to be charged a reasonable fee for participating in a work furlough program. Beginning July 1, 2021, offenders participating in any work furlough program cannot be charged a fee, and any debt still owed for such a program will be canceled.

continued

AB 1869 eliminates numerous administrative fees, effective July 1, 2021. Fees eliminated include city and county jail booking fees, public defender and appointed attorney fees, drug diversion progress report fees, home detention and electronic monitoring fees, pre-sentence report fees, probation supervision fees, county parole supervision fees, mandatory supervision fees, the costs of processing a P.C. 1203.9 jurisdictional transfer request or a request for interstate compact supervision, work furlough fees, and sheriff's work program/weekend work program fees. These fees and costs will no longer be imposed. And new Gov't C. 6111 and new P.C. 1465.9 cancel any debt that is still owed on these fees.

New P.C. 1465.9 cancels all outstanding debts involving P.C. 6266 fees by providing that beginning July 1, 2021, the balance of any of these court-imposed costs is "unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated."

Uncodified Section Two of this bill provides that the Legislature's intent is to "eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system," and "to eliminate all outstanding debt incurred as a result of the imposition of administrative fees."

P.C. 11070
(New)
(Ch. 170) (AB 3099)
(Effective 1/1/2021)

Adds new Article 2.4 in Chapter 1 of Title 1 of Part 4 of the Penal Code entitled "Tribal Assistance Program." Requires DOJ, subject to an appropriation by the Legislature, to provide technical assistance to local law enforcement agencies that have Indian land within or abutting their jurisdictions, and to tribal governments with Indian lands, to do all of the following:

1. Provide guidance for law enforcement education and training on policing and criminal investigations on Indian lands.

2. Provide guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools for conducting police investigations on Indian lands.

3. Provide educational materials about the complexities of concurrent criminal jurisdiction with tribal

continued

governments and their tribal law enforcement agencies, to tribal citizens on Indian lands, including information on how to report a crime, and information relating to victim's rights and victim services in California.

4. Facilitate and support improved communication between local law enforcement agencies and tribal governments or tribal law enforcement agencies.

Requires DOJ, subject to an appropriation, to conduct a study to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.

[Uncodified Section One of this bill sets forth the Legislature's findings and declarations, including the declaration that there exists jurisdictional uncertainty on Indian lands. Federal Public Law 83-280 expressly grants California concurrent criminal jurisdiction with California's tribal governments for the enforcement of statewide criminal laws.]

P.C. 11105
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

and

(Ch. 191) (SB 905)
(Effective 1/1/2021)

SB 188 amends subdivision (p)(2)(A) to require the Attorney General to provide to the Commission on Teacher Credentialing every conviction rendered against a teaching credential applicant, regardless of conviction relief granted pursuant to P.C. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. (This subdivision continues to prohibit the release to other specified entities of convictions for which relief has been granted.)

The new language provides that "The Commission on Teacher Credentialing shall receive every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted pursuant to ….. "

[It is unclear whether the date of January 1, 2020 means that the new language applies to teaching credential applications dated January 1, 2020 and later such that a conviction of any age will be provided to the Commission for these applications, or whether it means that only convictions occurring January 1, 2020, and later will be disclosed.]

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SB 905 amends subdivision (b)(10) and adds a new subdivision (u) to establish a procedure for requesting federal criminal history information through California's Dep't of Justice, and to establish a process for communication between the DOJ and FBI. Provides that if a fingerprint-based criminal history information check is required pursuant to **any statute**, the agency or entity requesting the check shall submit to DOJ fingerprint images and related information required by DOJ for the applicant. Requires DOJ to transmit fingerprint images and related information to the FBI, to review the federal criminal history information the FBI sends back, and then to compile and provide "a state- or federal-level response or a fitness determination," as appropriate, to the requesting agency or entity. Requires the agency or entity to request subsequent notification service from the DOJ (so that new arrests would be reported). Requires DOJ to charge a fee to cover the reasonable cost of processing these criminal history checks.

According to the legislative history, the purpose of SB 905 is to create a "universal citation" (new subdivision (u)) to define consistent procedures for agencies and organizations to request fingerprint-based criminal history information from the FBI through California's DOJ. Federal law requires that there be specific language in a state statute before the FBI will supply criminal history information to a state DOJ. Enacting a "universal citation" in subdivision (u) eliminates the need to include the language from the specific statute that permits the background check, when California's DOJ requests a federal criminal history check. Instead, P.C. 11105(u) will cover all requests for information from the FBI. This will reduce the number of federal criminal history checks that are denied by the FBI. The FBI notified DOJ that the statute permitting state employee background checks in P.C. 11105(b)(10) does not meet the requirements of federal law. New subdivision (u) fixes this problem.

P.C. 11105.3
(Amended)
(Ch. 191) (SB 905)
(Effective 1/1/2021)

Makes changes to the items an employer or human resource agency must submit to DOJ when requesting a background check (specified convictions and arrests pending adjudication) on a person who applies for a license, a job, or a volunteer position in which he or she will have supervisory or disciplinary power over a minor, by prohibiting DOJ from requiring the employer or agency to provide the applicant's residence address. Continues to

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require that the agency or employer supply the applicant's fingerprints to DOJ.

The purpose of the bill is to prevent a federal agency from obtaining the residence address of an applicant who may be in the United States illegally, and to reduce the fear that some people have about providing their address. The legislative history of the bill includes claims that DOJ "can be forced" to divulge background check records without a proper warrant, "constituting an unlawful seizure." "The fear of this personal information being taken has created a chilling effect on the volunteer efforts of organizations throughout the state. Individuals are afraid of volunteering and contributing in their communities for fear of their privacy being breached by federal entities."

P.C. 11106
(Amended)
(Ch. 289) (AB 2699)
(Effective 1/1/2021)

Adds cross-references to new paragraph (2) in new subdivision (e) in existing P.C. 32000 in order to add the specified transfer of an unsafe handgun to the types of firearm records the Attorney General is required to keep and maintain. P.C. 32000(e)(2) requires a person or entity that obtained an unsafe handgun pursuant to P.C. 32000(b)(4), (b)(6), or (b)(7) (i.e., for use as a service weapon or for one's official duties as a law enforcement officer or member of the military) to notify DOJ of the sale or transfer unless the sale or transfer is processed through a licensed firearms dealer, in which case the notice requirement is deemed satisfied. See P.C. 32000, below, for more information.

P.C. 11165.1
(Amended)
(Ch. 180) (AB 1145)
(Effective 1/1/2021)

Eliminates specified consensual sexual conduct from the definition of "sexual abuse" so that a mandated reporter of child abuse under the Child Abuse and Neglect Reporting act is **not** required to report it. Excludes this conduct from reporting requirements: voluntary conduct in violation of P.C. 286 (sodomy), 287 (oral copulation), or 289 (sexual penetration), if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor under age 16. For example, voluntary oral copulation between a 19-year-old and a 15-year-old would not be required to be reported if there are no indications of abuse.

Pursuant to existing law, consensual vaginal intercourse is not reportable unless it fits P.C. 261.5(d) (a person 21 years of

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age or older having intercourse with a minor under age 16). The purpose of the bill is to make consistent the reporting of all four types of sexual conduct in order to equalize the reporting of heterosexual sexual conduct and LGBTQ sexual conduct.

P.C. 11165.7
(Amended)
(Ch. 243) (AB 1963)
(Effective 1/1/2021)

Adds two new categories of mandated reporters under the Child Abuse and Neglect Reporting Act (CANRA):

1. A human resource employee of a business that employs minor, is a mandated reporter for purposes of child sexual abuse and neglect.

2. An adult person whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business is a mandated reporter, but only for sexual abuse. Provides that nothing in this new paragraph modifies or limits the person's duty to report any type of known or suspected child abuse or neglect when the person is acting in some other capacity that would otherwise make the person a mandated reporter.

Requires that the employers of these two categories of employees provide training in the identification and reporting of child abuse. Provides that the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Dep't of Social Services meets the training requirements.

P.C. 11166.02
(Amended)
(Ch. 242) (AB 1929)
(Effective 1/1/2021)

Eliminates the sunset date (January 1, 2021) and expands the pilot program for the Internet-based reporting of non-urgent child abuse and neglect that had been limited to a maximum of 10 counties and was available only to five categories of mandated reporters (peace officers; probation officers; school teachers and officials; doctors, nurses, social workers, and psychologists; and coroners).

Expands the non-urgent Internet-based reporting program to all counties that wish to participate and to all categories of reporters.

Continues to provide that a child abuse report made through the Internet is in lieu of the telephone call required by

continued

P.C. 11166(a) and that a written follow up report is **not** required to be submitted pursuant to existing P.C. 11166(a).

Requires a county to decommission its system for Internet-based reporting of child abuse and neglect when the State Department of Social Services (DSS) notifies counties that the statewide Internet-based reporting system is available and functional.

[This bill also amends W&I 10612.5 to eliminate the 10-county pilot program, to expand Internet-based reporting statewide, and to require participating counties to submit evaluations of the program to DSS during the first two years and to provide information to the State Legislature about the effectiveness of the program.]

P.C. 11166.4
(New)
(Ch. 353) (AB 2741)
(Effective 1/1/2021)

Authorizes counties to create Child Advocacy Centers (CAC) to implement a coordinated multidisciplinary response to reports of child physical or sexual abuse, exploitation, and maltreatment. Requires that a multidisciplinary team consist of a CAC representative and at least one representative each from law enforcement, child protective services, district attorney offices, medical providers, mental health providers, and victim advocates.

Sets forth numerous requirements, such as the multidisciplinary team having cultural competency and diversity training to meet the needs of the community it serves, and the CAC providing a dedicated child-focused setting that is safe and comfortable for forensic interviews of children.

Provides that an employee or agent of a CAC is immune from civil liability unless the employee or agent acts with malice or has been charged with or is suspected of abusing or neglecting a child who is the subject of an investigation.

[In 2019, the Governor vetoed AB 1221, an almost identical bill, because it provided for immunity from both civil and criminal liability, with no exceptions. This year's AB 2741 fixed this concern by providing only for immunity from civil liability and by making exceptions for malicious conduct or when abuse or neglect is suspected.]

P.C. 13015
(New)
(Ch. 337) (SB 823)
(Effective 9/30/2020)

Requires DOJ, by January 1, 2023, to submit a plan for the replacement of the Juvenile Court and Probation Statistical System (JCPSS) with a modern database and reporting system, in order to improve and modernize juvenile justice data collection and reporting. Requires DOJ to convene a working group of key stakeholders and experts, including those with expertise in juvenile justice data. Sets forth numerous items the plan must address.

P.C. 13651
(New)
(Ch. 322) (AB 846)
(Effective 1/1/2021)

Requires every police department, sheriff's office, or other entity that employs peace officers (e.g., district attorney offices) to review the peace officer job description used in recruiting and hiring and to make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, and that de-emphasize the paramilitary aspects of the job. Contains the Legislature's declaration that changes to job descriptions are necessary "to allow peace officers to feel like the public can trust law enforcement and to implement problem-solving policing and intelligence-led policing strategies in contrast with reactive policing strategies."

[This bill also amends Gov't C. 1031 to add the following to the list of minimum standards for a peace officer: being free from "bias against race or ethnicity, gender, nationality, religion, disability, and sexual orientation, that might adversely affect the exercise of the powers of a peace officer."

The bill also adds new Gov't C. 1031.3 to require the Commission on Peace Officer Standards and Training (POST), by January 1, 2022, to review and update the regulations and screening materials for a peace officer emotional and mental condition evaluation, and to add to the evaluation the identification of explicit and implicit bias towards race or ethnicity, gender, nationality, religion, disability, or sexual orientation. See the Government Code section of this digest for more information.]

P.C. 13655
(New)
(Ch. 336) (SB 480)
(Effective 1/1/2021)

Prohibits a department or agency that employs peace officers from authorizing or allowing its employees to wear a uniform that is similar to a United States Armed Forces uniform or a state active militia uniform, or that is made from a camouflage printed or patterned material. Provides

continued

that these prohibitions do *not* apply to the Dep't of Fish and Wildlife.

Applies to uniformed patrol officers, uniformed crime suppression officers, and uniformed duty officers at an event or disturbance, including those who respond or assist at a protest, demonstration, or similar disturbance. Provides that the uniform prohibitions do *not* apply to members of a SWAT team (Special Weapons and Tactics), sniper team, or tactical team engaged in a tactical response or operation.

Defines a "substantially similar" uniform as one that so resembles an official uniform of the U.S. Armed Forces or state active militia as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the Armed Forces or militia. Provides that a uniform will *not* be deemed to be substantially similar if it includes at least two of the following three components:

1. A badge or star or facsimile thereof mounted on the chest area;
2. A patch on one or both sleeves displaying the insignia of the employing agency or entity; or
3. The word "Police" or "Sheriff" prominently displayed across the back or chest area of the uniform.

P.C. 13823.15
(Amended)
(Ch. 249) (SB 1276)
(Effective 1/1/2021)

Eliminates the requirement that a Domestic Violence Shelter Service Provider (DVSSP) provide matching funds or in-kind contributions in order to receive funding from the state. Previously, providers were required to match at least 10% of state funds received, and now that figure is zero.

The legislative history of this bill states that because of COVID-19, domestic violence providers have not been able to host traditional fundraising events and donors negatively impacted by the economy are giving less or not at all. The history also points out that Rape Victim Counseling Centers and the Human Trafficking Victims Assistance Fund do not require matching funds.

P.C. 14211
P.C. 14212
(Amended)
(Ch. 228) (SB 388)
(Effective 1/1/2021)

Eliminates the subdivision in each of these sections that permitted a local jurisdiction to exempt itself from the procedures for receiving and handling reports of missing persons in these sections. Subdivision (h) is deleted from

continued

P.C. 14211 and subdivision (i) is deleted from P.C. 14212. Thus, these missing person procedures are mandatory throughout California.

P.C. 14211 continues to require that local police or sheriff's departments take a missing person report and make an assessment of reasonable steps to take. Continues to require that if the person reported missing is under age 21, or if there is evidence that the person is at risk, the agency must electronically transmit the information within two hours to DOJ for inclusion in the Violent Crime Information Center and the National Crime Information Center databases.

P.C. 14212 continues to set forth procedures for obtaining dental or skeletal X-rays and continues to require the Attorney General to enter this information into California's Violent Crime Information Center and to forward it to the National Crime Information Center.

[The legislative history of this bill does not indicate which, if any, local jurisdictions opted out of these missing person report provisions.]

P.C. 14216
(Amended)
(Ch. 332) (AB 2606)
(Effective 1/1/2021)

Requires each county probation department or supervising county agency, every 10 days, to update any supervised release file that is available to it on the California Law Enforcement Telecommunications System (CLETS), by entering any person placed onto postconviction supervision within their jurisdiction and under their authority, including persons on probation, mandatory supervision, and postrelease community supervision.

P.C. 14216 continues to require CDCR to update the supervised release file on CLETS with recent parolees and continues to require the Dep't of State Hospitals to add offenders released from state hospitals who are undergoing community mental health treatment and supervision through the Forensic Conditional Release Program. This bill extends supervised release file updating requirements to offenders on probation, mandatory supervision, and postrelease community supervision.

P.C. 16532
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Advances the date, from July 1, 2023 to April 1, 2022, by which licensed firearms dealers and licensed ammunition vendors will automatically be deemed licensed firearm precursor part vendors, if they comply with P.C. 30300–30340 (pertaining to ammunition restrictions) and P.C. 30342–30365 (pertaining to ammunition vendors).

P.C. 18010
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Advances the date, from July 1, 2024 to July 1, 2022, by which a firearm precursor part that is imported into California or sold in California will be deemed a nuisance and be subject to confiscation and destruction, if imported or sold in violation of P.C. 30400–30425 (firearm precursor part restrictions), P.C. 30442–30456 (firearm precursor part vendors), P.C. 30470 (firearm precursor part authorizations), or P.C. 30485–30495 (firearm precursor part vendor licenses).

Advances the beginning date, from July 1, 2024 to July 1, 2022, by which a district attorney, the Attorney General, or a city attorney may bring an action to enjoin the importation into California or the sale in California of any firearm precursor part that is imported or sold in violation of the above Penal Code sections.

P.C. 18140
(Amended)
(Ch. 286) (AB 2617)
(Effective 1/1/2021)

Requires a law enforcement officer who requests a temporary gun violence restraining order to file a copy of the order with the court no later than three court days after issuance. Previously a copy of the order had to be filed only as soon as practicable. Now it must be filed as soon as practicable, but no later than three court days after issuance.

P.C. 18205
(Amended)
(Ch. 286) (AB 2617)
(Effective 1/1/2021)

Expands the misdemeanor crime of a person owning or possessing a firearm or ammunition with the knowledge that he or she is prohibited from doing so because of a gun violence restraining order (GVRO), to include an out-of-state GVRO that is similar or equivalent to a California GVRO. In order for an out-of-state GVRO to apply under this section, it must have been issued upon a showing by clear and convincing evidence (not the lower standard of a preponderance of the evidence) that the person poses a significant danger of causing personal injury to self or others.

continued

According to the legislative history of this bill, some states have a lower standard of proof (a preponderance of the evidence) for issuing a GVRO than California has (clear and convincing evidence).

P.C. 25555
(Amended)
(Ch. 289) (AB 2699)
(Effective 1/1/2021)

Adds another exception to the P.C. 25400 crime of carrying a concealed firearm on the person or in a vehicle: transporting an unsafe handgun in order to comply with P.C. 32000(e)(2), which requires the sale or transfer of an unsafe handgun to a law enforcement agency, a law enforcement officer, or a member of the military for use as a service weapon, to be processed through a licensed firearms dealer or to be reported to DOJ within 72 hours.

[This bill makes a number of amendments to P.C. 32000. See below.]

P.C. 26379
(Amended)
(Ch. 289) (AB 2699)
(Effective 1/1/2021)

Adds another exception to the P.C. 26350(a)(1) crime of openly carrying an unloaded handgun: complying with P.C. 32000(e)(2), which requires the sale or transfer of an unsafe handgun to a law enforcement agency, a law enforcement officer, or a member of the military for use as a service weapon, to be processed through a licensed firearms dealer or to be reported to DOJ within 72 hours.

[This bill makes a number of amendments to P.C. 32000. See below.]

P.C. 26800
(Amended)
(Ch. 284) (AB 2362)
(Effective 7/1/2022)

Authorizes DOJ to impose a civil fine on a firearms dealer for any breach of a prohibition or requirement of Article 2 of Chapter 2 of Division 6 of Title 4 of Part 6 of the Penal Code (P.C. 26800–26915) that subjects a firearms dealer license to forfeiture. The maximum fine is $1,000. However, the civil fine may be up to $3,000 if the firearms dealer received written notification from DOJ about the violation and failed to take corrective action, or, if the dealer is determined by DOJ to have knowingly or with gross negligence violated a prohibition or requirement.

Permits DOJ to adopt regulations for fine amounts and to provide an appeals process.

continued

Requires any fine money received to be deposited into the Dealers' Record of Sale Special Account, to be used by DOJ for firearms-related regulatory and enforcement activities.

According to the legislative history, the purpose of the bill is to provide a sanction that is short of license forfeiture. To be able to operate in California, firearms dealers must have a Federal Firearms License, a license issued by a county or other local agency, and a Certificate of Eligibility issued by DOJ. If they have all three, they are included on the DOJ-maintained centralized list that allows them to operate their businesses. DOJ conducts spontaneous on-site inspections of dealers to ensure they are complying with firearm transfer requirements, record retention requirements, facility maintenance and security requirements, and waiting period requirements.

P.C. 27310
(Amended)
(Ch. 273) (AB 2061)
(Effective 7/1/2022)

Beginning July 1, 2022, permits DOJ to inspect firearm dealers, ammunition vendors, and manufacturers participating in a gun show or event, in order to ensure that firearm and ammunition sales at a gun show or event are conducted in accordance with applicable state and federal laws. Authorizes DOJ to adopt regulations to administer the application and enforcement of gun show and event laws (P.C. 27200–27415).

P.C. 28230
(Amended)
(Ch. 289) (AB 2699)
(Effective 1/1/2021)

Expands the list of firearms-related forms and reports for which DOJ is permitted to charge a fee, to add the actual costs of processing and filing reports pursuant to P.C. 32000(e)(2). P.C. 32000(e)(2) requires the sale or transfer of an unsafe handgun to a law enforcement agency, a law enforcement officer, or member of the military for use as a service weapon, to be processed through a licensed firearms dealer or to be reported to DOJ within 72 hours.

[This bill makes a number of amendments to P.C. 32000. See below.]

P.C. 29800
P.C. 29805
(Amended)
P.C. 29851
(Repealed)
(Ch. 306) (SB 723)
(Effective 1/1/2021)

Moves the requirement that a defendant have knowledge of an outstanding warrant in order to be convicted of the crime of owning, purchasing, receiving, or possessing a firearm while having an outstanding warrant, from P.C. 29851 to both P.C. 29800 and 29805, and creates a new paragraph in both sections for this crime. This is not a substantive amendment. It simply moves the knowledge requirement into the code sections that it applies to, and separates into a standalone paragraph the crime of possessing a firearm while knowing about an outstanding warrant.

P.C. 29851 is repealed. It had provided that P.C. 29800 (felon in possession of a firearm) and P.C. 29805 (specified misdemeanant in possession of a firearm) do not apply if a person has an outstanding warrant but does not have knowledge of that warrant.

The outstanding warrant element of P.C. 29800(a)(1) is moved to new paragraph (3) in subdivision (a) of P.C. 29800, which is now the felony crime of a person having a felony warrant with knowledge of the outstanding warrant, owning, purchasing, receiving, or possessing a firearm. Pursuant to P.C. 18, this crime is punishable by 16 months, two years, or three years in state prison. P.C. 29800(a)(1) remains the felony crime of a **convicted** felon owning, purchasing, receiving, or possessing a firearm.

The outstanding warrant element of P.C. 29805(a) is moved to new paragraph (2) of subdivision (a) of P.C. 29805, which is now the felony crime of a person who has a warrant for a specified misdemeanor with knowledge of the outstanding warrant, owning, purchasing, receiving, or possessing a firearm. Punishable by 16 months, two years, or three years in state prison; or by up to one year in jail; and/or by a fine of up to $1,000. P.C. 29805(a) is re-lettered to P.C. 29805(a)*(1)* and remains the felony crime of a **convicted** specified misdemeanant owning, purchasing, receiving, or possessing a firearm.

P.C. 30345
(Amended)
(Ch. 273) (AB 2061)
(Effective 7/1/2022)

Beginning July 1, 2022, permits DOJ to inspect ammunition vendors to ensure that they are in compliance with all laws. Authorizes DOJ to adopt regulations to administer the application and enforcement of laws relating to ammunition (P.C. 30210–30395).

P.C. 30400
P.C. 30405
P.C. 30406
P.C. 30412
P.C. 30414
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
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Advances the date, from July 1, 2024 to July 1, 2022, or from July 1, 2025 to July 1, 2022, at which these crimes and provisions relating to firearm precursor parts will be effective. In 2019, AB 879 created new Chapter 1.5 in Division 10 of Title 4 of Part 6 of the Penal Code entitled "Firearm Precursor Parts" (P.C. 30400–30495). Most of AB 879's provisions had a delayed effective date of July 1, 2024 or July 1, 2025. That date has now been advanced by two or three years, to July 1, 2022.

P.C. 30515
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Adds three types of semiautomatic centerfire firearms to the definition of "assault weapon":

(1) A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but has any one of the following:
(A) a pistol grip that protrudes conspicuously beneath the action of the weapon; or
(B) a thumbhole stock; or
(C) a folding or telescoping stock; or
(D) a grenade launcher or flare launcher; or
(E) a flash suppressor; or
(F) a forward pistol grip; or
(G) a threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer; or
(H) a second handgrip; or
(I) a shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel; or
(J) the capacity to accept a detachable magazine at some location outside of the pistol grip.
(2) A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.

continued

(3) A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

Changes the description of one of the references to semiautomatic shotguns on the assault weapon list by changing it **from** "a semiautomatic shotgun that has the ability to accept a detachable magazine" **to** "a semiautomatic shotgun that does not have a fixed magazine."

This bill also creates new P.C. 30685, which provides that a person does **not** illegally possess any one of the newly specified semiautomatic centerfire assault weapons if he or she possessed it before September 1, 2020, and all three of these apply:

(a) Prior to September 1, 2020, the person would have been eligible to register the assault weapon pursuant to new subdivision (c) in existing P.C. 30900; and
(b) The person lawfully possessed the assault weapon prior to September 1, 2020; and
(c) The person registers the assault weapon by January 1, 2022, in accordance with new subdivision (c) in existing P.C. 30900.

New subdivision (c) in existing P.C. 30900 sets forth the registration provisions for the three newly listed assault weapons. See P.C. 30900, below, for more information.

P.C. 30685
(New)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Provides that a person does **not** illegally possess any one of the three semiautomatic centerfire assault weapons newly specified in amended P.C. 30515 (see above) if he or she possessed it before September 1, 2020, and all three of these apply:

(a) Prior to September 1, 2020, the person would have been eligible to register the assault weapon pursuant to new subdivision (c) in existing P.C. 30900; and
(b) The person lawfully possessed the assault weapon prior to September 1, 2020; and
(c) The person registers the assault weapon by January 1, 2022, in accordance with new subdivision (c) in existing P.C. 30900.

continued

New subdivision (c) in existing P.C. 30900 sets forth the registration provisions for the three types of semiautomatic centerfire assault weapons added to P.C. 30515. See P.C. 30900, below.

P.C. 30900
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Adds a new subdivision (c) that sets forth the registration provisions for the three types of semiautomatic centerfire firearms added to the list of assault weapons in P.C. 30515. (See P.C. 30515, above, for more information on the three types of firearms.)

Provides that any person who lawfully possessed, prior to September 1, 2020, any one of the three semiautomatic centerfire firearms added to the definition of assault weapon in P.C. 30515, and who is eligible to register the weapon pursuant to existing P.C. 30950 (at least age 18 and not prohibited by any law from possessing, receiving, owning, or purchasing a firearm) must submit a registration application before January 1, 2022, but not until DOJ has adopted registration regulations.

Requires DOJ to adopt regulations for registration procedures and permits DOJ to charge a fee for registering each weapon. Requires that the registration application contain a description of the firearm; a photograph of the firearm; the date the firearm was acquired; the name and address of the individual from whom, or business from which, the firearm was acquired; the registrant's full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver's license number or identification number; and any other information DOJ deems appropriate.

P.C. 30955
(Amended)
(Ch. 29) (SB 118)
(Effective 8/6/2020)

Prohibits the joint registration of any one of the three semiautomatic centerfire firearms added to the list of assault weapons in P.C. 30515. Unlike for .50 BMG rifles and other assault weapons owned by family members residing in the same household that are permitted to be jointly registered, the three types of semiautomatic centerfire firearms added as assault weapons to P.C. 30515 cannot be jointly registered. [See P.C. 30900, above, for the registration provisions for semiautomatic centerfire firearms. See P.C. 30515, above, for the three types of firearms added to the list of assault weapons.]

P.C. 31910
(Amended)
(Ch. 292) (AB 2847)
(Effective 1/1/2021)

Requires a semiautomatic pistol, by July 1, 2022, to have a chamber load indicator, to have a magazine disconnect mechanism if the pistol has a detachable magazine, and to be equipped with micro-stamping technology in at least one place on the interior surface, in order to be listed on the DOJ roster of "not unsafe" handguns (P.C. 32015) that can be lawfully sold in California. The purpose of the bill is to reduce unintentional firearm deaths and injuries, and to encourage the development and sale of handguns with these safety features.

A chamber load indicator alerts a person handling a handgun that it is loaded. A magazine disconnect mechanism ensures that a handgun cannot fire a chambered cartridge if the magazine has been removed. Micro-stamping technology imprints a unique microscopic array of characters onto the casing of each round fired, which helps law enforcement identify the gun the round was fired from.

All three of these safety features have been required for years in order to avoid a semiautomatic pistol being deemed an unsafe handgun. According to the legislative history of this bill, the gun industry has not introduced any new handgun models in California since the 2007 safety laws were passed, so Californians have not benefited from these safety features. Firearm manufacturers say that they do not have the capacity to micro-stamp cartridges in two places on the interior surface of the firearm, but that they can do it in one place. This bill revises the micro-stamping requirements from two places on the interior surface, to one place.

Authorizes DOJ, for every semiautomatic pistol newly added to the "not unsafe" handgun list in P.C. 32015, to remove three semiautomatic pistols from the list that were added to the list before July 1, 2022 and that do not have one or more of the three safety features (micro-stamping, chamber load indicator, and magazine disconnect mechanism.) Requires that semiautomatic pistols be removed in reverse order of their dates of addition to the list, starting with the guns that were added on the earliest date, and continuing until every semiautomatic pistol on the list includes all three safety features. Provides that each firearm removed shall be considered an unsafe handgun.

Authorizes DOJ to adopt emergency regulations to implement this bill.

P.C. 32000
(Amended)
(Ch. 289) (AB 2699)
(Effective 1/1/2021)

Makes a number of changes to this section which pertains to unsafe handguns.

Subdivision (a) is renumbered to *paragraph (1)* of subdivision (a) and remains the misdemeanor crime of manufacturing, importing, keeping for sale, giving, or lending an unsafe handgun.

Adds, in new subdivision (a)(2), a civil penalty of up to $10,000 for failing to report to DOJ the sale or transfer of an unsafe handgun obtained pursuant to P.C. 32000(b)(4), (b)(6), or (b)(7) (i.e., an unsafe handgun sold to or purchased by a law enforcement agency, a specified law enforcement officer, or a member of the military for use as a service weapon).

Adds, in new subdivision (a)(3), a civil penalty of up to $10,000 for the unlawful sale or transfer of an unsafe handgun obtained pursuant to P.C. 32000(b)(4), (b)(6), or (b)(7) and provides that this civil penalty is in addition to any criminal penalty provided for in subdivision (a)(1), above.

Expands provisions that permit law enforcement entities and their sworn members to carry unsafe handguns as their service weapons and avoids forcing officers who currently carry unsafe handguns (those guns not an approved list of handguns kept by DOJ) from having to give them up if they have gone through appropriate training:

1. Adds a local agency employing park rangers described in P.C. 830.31(b) to the list of agencies that may purchase an unsafe handgun for use as a service weapon by their sworn members.

2. Amends subdivision (b)(6), which lists a number of agencies that are permitted to purchase unsafe handguns as service weapons for their sworn members, to add a condition that these sworn members complete the POST basic course and, who, as a condition of carrying the handgun, complete a live-fire qualification at least once every six months. (POST = Commission on Peace Officer Standards and Training.)

3. Adds a new paragraph (7) in subdivision (b) to permit a number of other agencies to purchase unsafe handguns for use as service weapons by their sworn members

continued

who have completed the POST basic course and who, as a condition of carrying the handgun, complete a live-fire qualification at least once every six months. The specified agencies include the California Horse Racing Board, the State Dep't of Public Health, the Dep't of Toxic Substances Control, the Public Employees' Retirement System, the California State Lottery, and the Franchise Tax Board.

4. Requires in new subdivision (e)(1), that DOJ maintain a database of unsafe handguns obtained pursuant to (b)(4), (b)(6), and (b)(7) (i.e., unsafe handguns for use as service weapons sold to or purchased by a law enforcement agency, a law enforcement officer, or a member of the military).

5. New subdivision (e)(2) requires a person or entity that is in possession of an unsafe handgun obtained pursuant to (b)(4), (b)(6), or (b)(7) to notify DOJ within 72 hours of the sale or transfer, unless the transaction is processed through a licensed firearms dealer, in which case the notice requirement is deemed satisfied.

6. New subdivision (e)(3) requires DOJ, no later than March 1, 2021, to provide notice to persons or entities already in possession of an unsafe handgun pursuant to (b)(4), (b)(6), or (b)(7) regarding the prohibitions on the sale or transfer of unsafe handguns. Requires DOJ thereafter to provide notice as transactions occur.

Public Resources Code

Pub. Res. C. 14547
(New)
Pub. Res. C. 14549.3
(Amended)
(Ch. 115) (AB 793)
(Effective 1/1/2021)

Requires plastic beverage containers sold by a beverage manufacturer and that are subject to the California Redemption Value, to contain an increasing percentage of post-consumer recycled plastic content by creating a graduated plan that mandates at least 50% recycled plastic by January 1, 2030. Requires at least 15% recycled plastic between January 1, 2022 and December 31, 2024; at least 25% recycled plastic between January 1, 2025 and December 31, 2029; and at least 50% recycled plastic by January 1, 2030.

Provides that beverage manufacturers that do not meet the minimum recycled plastic content requirements will be subject to an annual administrative penalty beginning January 1, 2023.

Contains provisions empowering the Director of Resources Recycling and Recovery to adjust the minimum percentages at the request of the beverage industry or on his or her own initiative, and sets forth factors to consider.

Prohibits a city, county, or other local government jurisdiction from adopting an ordinance regulating the minimum recycled plastic content of a plastic beverage container.

Does not apply to a refillable plastic beverage container.

Pub. Res. C. 18017
(New)
(Ch. 115) (AB 793)
(Effective 1/1/2021)

Adds that these types of rigid plastic bottles are exempt from the provisions of Pub. Res. C. 18010–18016 pertaining to rigid plastic containers and bottles: medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products. Thus the labeling requirements for rigid plastic containers and bottles set forth in Pub. Res. C. 18015 do not apply to specified medical containers and bottles, and thus the infraction crime in section 18016 making it unlawful to manufacture a rigid plastic container that is not properly labeled will also not apply.

Public Utilities Code

Public Util. C. 8380
Public Util. C. 8381
(Amended)
(Ch. 188) (AB 2788)
(Effective 1/1/2021)

Adds that an electrical or gas corporation (Public Util. C. 8380) or a local publicly owned electric utility (Public Util. C. 8381) shall not share, disclose, or make accessible to any immigration authority, a customer's electrical or gas consumption data without a court-ordered subpoena or judicial warrant.

The legislative history of the bill asserts that electric and gas consumption data can be used to determine where a person lives, the number of people in a household, and their comings and goings, and that Immigration and Customs Enforcement (ICE) makes requests for account information and obtains data through an administrative subpoena process in order to learn a person's typical routine.

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Streets & Highways Code

S&H 5898.16
S&H 5898.17
(Amended)
(Ch. 158) (AB 2471)
(Effective 1/1/2021)

and

(Ch. 156) (AB 1551)
(Effective 1/1/2021)
(Further amends S&H 5898.17)

Extends the time a senior citizen has to cancel a Property Assessed Clean Energy (PACE) assessment contract from three business days to five business days. (PACE programs allow a property owner to finance the up-front costs of energy improvements on a property and then pay the costs back over time through an assessment. The debt is a lien on the home.)

[Retains three business days as the cancellation deadline for **non**-senior citizens.]

Defines "senior citizen" as an individual who is 65 years of age or older.

Provides that the five-day right to cancel applies to contracts entered into on or after January 1, 2021.

According to the legislative history of this bill, a substantial number of complaints are received from seniors about these kinds of contracts, which involve a senior's largest financial asset (a home) being placed at risk or even lost to foreclosure as a result of high-pressure sales and contracts that are misrepresented or misunderstood.

[This bill makes the same amendments to B&P 7150, 7159 (home improvement contracts), and 7159.10 (service and repair contracts), and to Civil C. 1689.5–1689.24 (home solicitation contracts and seminar sales solicitation contracts). See the Business & Professions Code section and the Civil Code section in this digest.]

S&H 5898.17 is also amended to require that the Financing Estimate and Disclosure be no smaller than 12-point type unless the property owner opts out of receiving a printed paper copy and the disclosure is provided electronically.

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Vehicle Code

V.C. 21809
(Amended)
(Ch. 100) (AB 2285)
(Effective 1/1/2021)

Extends the reach of the "slow down, move over" law from freeways only, to also include local streets and roads by changing the word "freeway" to "highway." Existing V.C. 360 defines "highway" 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."

V.C. 21809 requires a driver approaching a stationary emergency vehicle displaying emergency lights, or a tow truck that is displaying flashing amber warning lights, or a Dep't of Transportation vehicle displaying flashing amber warning lights, to either make a lane change into a lane that is not immediately adjacent to the emergency vehicle, or, if a lane change would be unsafe or impracticable, slow to a reasonable and prudent speed. A violation of V.C. 21809 remains an infraction, punishable by a fine of up to $50.

V.C. 27002
(Amended)
(Ch. 262) (SB 909)
(Effective 9/29/2020)

Authorizes an emergency vehicle to be equipped with a "Hi-Lo" audible warning sound and limits its use to notifying the public about an immediate evacuation in case of an emergency. Requires that the Hi-Lo sound meet requirements established by the Department of the California Highway Patrol.

The purpose of the bill is to have an evacuation sound that is uniform across the state so that it can be recognized anywhere.

V.C. 40220
(Amended)
(Ch. 55) (AB 3277)
(Effective 1/1/2021)

Makes several changes to the monthly installment payment program for parking tickets:

1. Increases the maximum parking ticket debt, from $300 to $500, for which a debtor may participate in a monthly payment program.

2. Extends the time, from 18 months to 24 months, that a parking ticket debtor has to pay off the tickets.

3. Extends, from 60 days to 120 days, the time a debtor has to request to participate in a payment plan after a parking violation is issued.

continued

4. Adds that each processing agency must ensure that the already required linked Internet web page to its payment program be "readily accessible in a prominent location on the parking citation payment section" of its website.

The goal of the bill is to make parking ticket payment plans available to more violators.

Welfare & Institutions Code

(See the Juveniles section of this digest for W&I changes that pertain to juvenile criminal law.)

W&I 223.2
(New)
(Ch. 340) (SB 1290)
(Effective 1/1/2021)

Eliminates the unpaid balance on county-assessed or court-ordered costs that were imposed before January 1, 2018, pursuant to a number of Welfare & Institutions Code sections and Penal Code sections. The purpose of the bill is to eliminate debt for the parents or guardians of juvenile wards in specified circumstances, for juveniles who were ordered to participate in substance abuse testing, and for adults who were 21 years of age or younger when participating in electronic home detention, substance abuse testing, or work furlough. Existing law, since January 1, 2018, no longer requires minors and young adults to pay for these fees and costs. This bill wipes out any pre-2018 debt.

Eliminates the outstanding balance of specified county-assessed or court-ordered costs imposed before January 1, 2018, on the parent or guardian of a minor, if the minor was adjudged a ward of the juvenile court, or was on probation pursuant to W&I 725 without being adjudged a ward, or was the subject of a petition filed to adjudge the minor a ward of the court, or was on informal supervision pursuant to W&I 654.

Applies to these W&I provisions:

1. W&I 207.2 (the cost of transporting a minor after temporary custody, or the cost of food and care while in temporary custody).

2. W&I 903 (the cost of the support of a minor while detained in a juvenile facility).

3. W&I 903.1 (the cost of legal services rendered to a minor by an attorney).

4. Former W&I 903.15 (a registration fee of up to $50 for appointed legal counsel).

5. W&I 903.2 (the cost of home supervision of a minor).

6. W&I 903.25 (the cost of food, shelter, and care of a minor who remains in the custody of a probation department or

continued

facility, after a parent or guardian receives notice to pick up the minor).

7. W&I 903.4 (the cost of the support of a minor in out-of-home placement).

8. W&I 903.5 (the cost of the care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid such as AFDC or SSI).

Eliminates the outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, on a minor who was ordered to undergo substance abuse testing pursuant to W&I 729.9.

Eliminates the outstanding balance of specified county-assessed or court-ordered costs imposed before January 1, 2018 on an adult who was age 21 or younger at the time and who was prosecuted in criminal (adult) court.

Applies to these Penal Code provisions:

1. P.C. 1203.016 (electronic home detention program after sentencing).

2. P.C. 1203.1ab (substance abuse testing as a condition of probation).

3. P.C. 1208.2 (the cost of county parole, or work furlough, or P.C. 1203.016 electronic home detention for sentenced inmates, or P.C. 1203.018 electronic monitoring in lieu of bail).

W&I 328.1
(New)
(Ch. 233) (SB 907)
(Effective 1/1/2021)

Requires a county child welfare department investigating a case of child abuse or neglect involving an allegation against the parent or guardian of the child to attempt to determine, as soon as practicable, if the parent or guardian is an active-duty member of the Armed Forces of the United States. Permits a county child welfare department to adopt memoranda of understanding with military installations in the county that govern the investigation of child abuse and neglect allegations against active-duty service members.

W&I 5150.5
(New)
W&I 5151
(Amended)
(Ch. 149) (AB 3242)
(Effective 1/1/2021)

Authorizes a mental health examination or assessment pursuant to W&I 5150 or W&I 5151 (involuntary detention for evaluation and treatment for up to 72 hours) to be conducted using telehealth. Defines "telehealth" as a mode of delivering health care services and public health via information and communication technologies.

Provides that before a person is admitted to a facility for treatment and evaluation for up to 72 hours, the required assessment must be made face-to-face either in person or by synchronous interaction through a mode of telehealth that utilizes both audio and visual components.

W&I 5848.7
(New)
(Ch. 137) (AB 465)
(Effective 1/1/2021)

Requires that any program or pilot program in which mental health professionals respond to emergency calls related to mental health crises in collaboration with law enforcement personnel, or in place of law enforcement personnel, be supervised by a licensed mental health professional. Permits the supervising licensed mental health professional to also respond to calls and provide care.

Code	Section No.	Chapter No.	Bill No.	Page No.
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